

**NEW ZEALAND ROYAL COMMISSION of INQUIRY  
into HISTORICAL ABUSE in STATE CARE and in the CARE of FAITH-  
BASED INSTITUTIONS**

**FORMAL PRESENTATION**

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## INTRODUCTION

It is a privilege to be asked to make this presentation. We congratulate the Government and people of New Zealand for conducting this high-level inquiry into child abuse and to have included in its Terms of Reference both Government-based and faith-based institutions. The road to this Royal Commission has been long and arduous, especially for the victim survivors – their suffering must be paramount in our minds and hearts. Our focus will be on faith-based institutions, especially the Catholic Church which is a very complex Christian institution. In keeping with paragraph 17 of the Terms of Reference, our focus will be on care and transforming care interpreted both narrowly and broadly and both directly and indirectly. We will look both backwards and forwards as outlined in paragraph 26. Our focus will be on children under 18 but will implicitly cover vulnerable adults.

Of course, this is not New Zealand's first Royal Commission to address the topic of child abuse. Over 119 years ago, a short Royal Commission was held in August 1900 which investigated the Marist Brothers' Stoke residential facility outside Nelson. It was dismissed by the *New Zealand Catholic Tablet* as an anti-Catholic, Orange plot. Though two brothers who were alleged to have abused were exonerated, the Commission in its Report found much to criticize in its management, staff and standard of care. The Marist Brothers were eventually forced to vacate the facility.

The physical, emotional and sexual abuse of children and vulnerable adults whether it occurs in families or in State- or in faith-based institutions (remembering its incidence is worse in family settings) is a scourge. In the Christian setting, it can be traced back even to the earliest years of the Church. The early Church condemned the regular abuse by the *paterfamilias* of the young slave women or young slave boys of his family household. Our 2017 RMIT University report to the Australian Royal Commission into Institutional Responses to Child Sexual Abuse has documented various instances in Church history where clerical sexual abuse of children has been revealed in historical documentation (Cahill & Wilkinson 2017).

### *The Excommunication of St Mary MacKillop*

One outstanding example is relevant to both Australia and New Zealand. In 1871, Mother Mary MacKillop, Australia's first saint as St Mary of the Cross, whose Josephite nuns came to Whanganui in 1880 and Temuka in 1883, was excommunicated by the Bishop of Adelaide for several reasons. One was because she had reported a parish priest for sexually abusing school children in his rural parish north of the Barossa Valley. The priest, other diocesan priests and the bishop were all Franciscans, and they ganged up against Mother Mary in an act of clericalist solidarity. This reason for her excommunication was kept hidden from the Catholic communities of Australia and New Zealand for 140 years. One wonders what salutary effect knowledge of this incident might have had on religious offenders in subsequent decades. The Irish Christian Brothers, who came to Dunedin in 1876, have one of the worst offending records in Australia with more than one in five having credible accusations against them according to the Australian figures; the first Christian Brother was jailed in 1919, and sexual abuse of boys was a problem in this religious order in every decade of the 20<sup>th</sup> century (see Australian Royal Commission 2017, Case Study 11).

### *The Moral and Criminal Scourge of Child Sexual Abuse*

"...And what would God think?" were the words of an Australian priest offender who did not begin sexually abusing a child until his fifties (Winship 2012). The Christian Church has always condemned child sexual abuse, unfortunately in recent centuries seeing it as a sin and not as a crime. Ultimately the

clerical sexual abuse scandal is a tragedy of immense proportions, variously described as the Church's Biblical lament and the Church's Golgotha. The ravished innocence of the child – abused, assaulted, violated, raped and sodomised – lies at the centre of this religious catastrophe. In educating our children about their own self-protection, the Christian message could be built around a very useful maxim, highlighting bodily ownership, *NO trespassing; This is MY Body*.

#### *Damage to the Public Image of the Catholic Priesthood*

There is no doubt that the public image of the Catholic celibate priesthood has been irrevocably damaged and this has impacted upon the self-image of countless good, committed and holy priests who have dedicated their lives ministering to the Catholic communities here in New Zealand and across the world, sometimes in difficult and dangerous situations. This was, unfortunately, inevitable – our work suggests that a thorough-going renewal of the Catholic priestly ministry in policy and praxis is needed, including the abrogation of mandatory celibacy although this would not be a panacea.

#### *The Corruption of Power and its Hiddenness*

Child sexual abuse is always about power and the abuse of power. Power corrupts, and ecclesiastical power corrupts ecclesiastically. Child sexual abuse always is hidden, very hidden, hidden by the priest and religious perpetrator. And this is why it is so insidious. The crime takes place in secret between the perpetrator and the victim. And the victim is neutralized into silence. The Australian Royal Commission found very little evidence of paedophile rings in religious settings. The additional point to be made here is that priest and religious brother offenders are very great deniers, continually and determinedly protesting their denial of their own criminal behaviour. Some Catholic bishops and religious superiors have found this out to their great cost. And the higher up the Church hierarchy the offender is, the greater the strength, the determination and the duration of the denial. Clerical sexual abuse in the Catholic Church also has to be understood within the parameters of its dysfunctional governance with the lack of transparency and accountability, all within an enveloping culture of clericalism, and within its badly flawed selection, screening and training processes in previous decades and centuries.

#### *The Researchers' Professional Backgrounds*

It is important for you as Royal Commissioners and for the people of New Zealand to understand the experience, expertise and credibility that we have brought to this presentation. Trained in the 1950s and 1960s, we were ordained as Catholic priests, educated both in Australia and in Rome and so we have a deep knowledge of how the Catholic Church operates and is governed locally, internationally and at the Holy See. Emeritus Professor Des Cahill worked pastorally in Melbourne and Dr. Peter Wilkinson in Australia and Korea. Like so many other priests, we resigned from the priesthood in the 1970s, and today both of us are parents and grandparents. We remain committed and practising Catholics. Professor Cahill is a trained educational, social and cross-cultural psychologist and specializes in migration, cross-cultural and religious and interreligious issues.

Following his resignation from ministry in 1976, Dr Peter Wilkinson worked in the areas of immigration, settlement, education and multicultural affairs. Following retirement, he began researching parish ministry and religious demographic trends. In 2011 he helped found the Melbourne-based group, *Catholics for Renewal*, out of concern for the Catholic Church's current situation and global well-being, and is its immediate past president. Longer CVs are provided in Appendix One.

We began researching the issue of clerical sexual abuse in 2011 when *Catholics For Renewal* made a submission to the Cummins Report in Victoria. In 2012, Professor Cahill was called to appear before

the Victorian Parliamentary Inquiry to give evidence on child sexual abuse within both the Catholic Church and non-Christian religions such as the Buddhist and the Hindu – its report *Betrayal of Trust* with its recommendations now appropriately legislated was published in 2013. He then participated in a workshop in Spain in 2014 sponsored by the International Institute for the Sociology and the Law. This brought together the world's leading researchers into child sexual abuse within the Catholic Church.

One of its major insights was that in a particular country the social and public unveiling of child sexual abuse in religious institutions is usually triggered by an incident or disclosure that receives much publicity. In Belgium as one example, in 2010 the maximum publicity given to a victim who had been abused by his uncle, who happened to be the Catholic Bishop of Bruges, led to many victim survivors coming forth to make public their disclosures. In addition, New Zealand, like both the UK, Ireland and most other countries, has not developed a website documenting cases of clerical and religious child sexual abuse in Catholic settings such as *Broken Rites* in Australia, *bishops.accountability* in the US and *Sylvia's Site* in Canada to give some idea of its prevalence though these websites document about 60 per cent out of actual religious perpetrator cases. The other cases remain hidden from view.

Our task today is four-fold:

- (i) To bring to your attention the various Government-sponsored and Church-sponsored inquiries into child sexual abuse by Catholic priests and religious groups since 1985 when the first was held in the US, and the care and safeguarding initiatives that resulted, and to incorporate their findings and recommendations into our presentation**
- (ii) To present and assess Volume 16, Books 1 – 3 of the Report of the Australian Royal Commission which dealt with religious institutions, especially the Catholic Church, the Anglican Church, the Orthodox Jewish community and the Jehovah's Witnesses and to present how the care mechanisms failed where the needs of religious personnel were placed ahead of those of the victims**
- (iii) To provide you with an explanatory roadmap in understanding the very complex phenomenon of clerical sexual abuse of children and vulnerable adults and the various constellations of intersecting variables that have led to clerical sexual abuse in the Catholic Church**
- (iv) To present possible ways forward based on our survey of the recommendations, reflecting on the New Zealand context and the similarities and differences with comparable nations**

In today's presentation, after providing some basic information about the Australian Royal Commission and 17 other international reports and addressing several common myths, we will examine the four constellations of variables associated with clerical sexual abuse before presenting the prevalence data into clerical sexual abuse, drawing on Australian, German and US data sources. We will also comment on sexual abuse in other religious institutions, especially in the Anglican Church, the Salvation Army and amongst the Jehovah's Witnesses and present the findings and recommendations of the Australian Royal Commission. Finally, we will address several special issues including mandatory reporting and religious confession.

## THE AUSTRALIAN ROYAL COMMISSION AND OTHER INQUIRIES WORLDWIDE

The Royal Commission's figures show that 572 Australian priests and 597 brothers as well as 543 lay persons sexually offended in Catholic settings against children, usually boys (70%) (Royal Commission, Vol. 17, Book 2, 2017). In a series of scarifying results comparable to the US evidence, the Australian Royal Commission into Institutional Responses to Child Sexual Abuse which concluded in December 2017 found that between 1950 and 2012 in Australia, one in thirteen diocesan priests and one in seventeen religious order priests sexually offended against children. The offending was worst in the regional dioceses and least in the archdiocese of Adelaide. An estimated one in eight religious brothers sexually offended against children, especially amongst the St John of God Brothers who cared for mentally disabled children as well as the Christian Brothers, the Marist Brothers and the De La Salle Brothers teaching in daytime and boarding schools.

### *The Offending by Religious Brothers and Sisters*

There was very little sexual offending by nuns though through sheer sexual naivete some did permit priests and handymen to have access to children in their orphanages. However, both the relevant Australian and Irish reports have documented serious emotional and physical abuse by nuns against children in their residential care institutions.

The high offending rate amongst religious brothers such as the Marist brothers and the Christian brothers needs explanation. The central factor was their lack of interface with the adult feminine. Whilst it has now partially changed, their contact with women was generally minimal, beginning with the fact that they were educated usually in male-only secondary colleges, and trained for the religious life in male-only juniorates, novitiates and scholastics without the space to reach a mature and integrated sexual identity. Their contact with women in teacher training institutions would have been carefully proscribed, and then they were appointed to male-only schools where they were in charge of young boys and adolescents. And they were living in all-male religious communities. It was a recipe for a psycho-spiritual disaster.

The Irish Ryan Report (2009) contains by far the most sophisticated analysis of the situation of the Christian Brothers, highlighting their failure to appreciate the emotional needs of the children in their care or to pursue appropriate training in community child and youth welfare. It documented their lack of acknowledgement of congregational responsibility for what happened, the consequences of the regime of blind obedience with its humiliating punishments, their fear of change, the lack of institutional memory, and their use of government funds to cross-subsidise other activities. The psychological fear of women and their gendered depreciation of women were factors that operated right across the Catholic Church, and their integration into its decision-making structures and its ordained ministry remains a major future and immediate task for the Catholic Church. But, while there is much talk, very little seems to be happening.

Terrible as these abuse statistics are, they must be balanced by the fact that 59 per cent of Catholic priest sexual abusers had only one claim of redress against them, thus only one victim but probably abused several, if not many, times. As well, the probability of a young Catholic child being abused by a Catholic priest or religious was always relatively small but not low. In the Australian context, our estimate is that it ranged from one in 200 to one in 400. The risk, however, was very much higher for boys, particularly if they were altar boys or choir boys and it was very high for boys in Catholic residential institutions cared for by religious brothers (Cahill & Wilkinson 2017, see p. 290). However, when altar girls were

introduced in the early 1980s, the offending against altar boys and girls was about equal, according to the US figures.

### *Australia and Overseas Reports in the Australian Royal Commission Methodology*

The Australian Royal Commission identified 17 major overseas government-sponsored and Church-sponsored public inquiries that were totally focussed on the Catholic Church: in the U.S. (7 inquiries), Canada (2), England and Wales (2) Ireland (4) Belgium (1 unfinished) and the Netherlands (1). But with its seventeen volumes none has been as comprehensive or as thorough or as well-funded or has the moral authority as the 2017 Report of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse chaired by Justice Peter McClellan. In September, 2018, the German Bishops Conference published a very useful research report, entitled *Sexual Abuse of Minors by Catholic Priests, Deacons and Male Members of (Religious) Orders*.

The Australian methodology was partly built around private sessions (8,846 people) and written accounts (992 accounts) which allowed victim survivors to come forward, tell their story and have its veracity acknowledged. Late in 2018 the Australian Prime Minister, Scott Morrison, gave a formal apology to all survivors as well as those who did not survive through natural death or suicide. The process was done with great care, with appropriate and proper support for the offended person. The Royal Commission subpoenaed 1,234,000 documents and its other major strategy was to conduct 57 case studies where each of the hearings was conducted over 444 days with 45,341 pages of evidence, all telecast live for through streaming on the Commission's website. Sixteen issue and consultation papers were commissioned and there were 44 community forums and six youth forums, mainly in youth detention centres. The Commission made 2,252 referrals to the police, including 1,129 (50.1%) related to religious settings.

## **DISMISSING THE MYTHS**

Let us begin by dismissing several myths:

**Myth No. One:** *The Royal Commission and other similar inquiries worldwide together with the copious media reports are part of secularist, anti-Catholic vendettas with exaggerated and repetitious findings and over-reporting of the offending terrible though it is.*

In Australia as elsewhere, some Catholics have accused the various government inquiries of conducting anti-Catholic vendettas. Anti-Catholicism and anti-clericalism has always been around and this has probably played a role in the social condemnation of the Church. Other Catholics have been very disapproving of the media and its journalists, alleging they were exaggerating its scope and in repetitively going over the same material. Certainly there has been some of this, but it has been the journalists together with academics, especially female researchers and priest/ex-priest psychologists who have rightfully brought the abuse problem to the surface until Government and Church authorities were forced to act.

But we need to keep our focus on the facts. Catholics are about one quarter of the Australian population but the Royal Commission found that of those who were abused in religious settings, 61.4 per cent were abused in Catholic institutions. Except for the Jehovah's Witnesses, no other religious group came close to the Catholic Church in the level of offending though the Anglican level was relatively high (Cahill & Wilkinson 2017).



**Myth No. Two:** *Clerical sexual abuse occurred only after World War Two and was exacerbated by the sexual revolution of the 1960s, the Second Vatican Council (1962 – 1965) and the general climate of secular and Catholic liberalism*

Based on the evidence from our research, it was our conclusion that the Holy See knew of the issue right throughout the 20<sup>th</sup> century as seen in the 1922 Instruction *Crimen Sollicitationis* and its re-issue in 1960. Sexual soliciting by means of the confessional had always been a problem for the Church, not lessened by the introduction of the confessional box. And the situation was worsened by the very questionable decision in 1910 by Pope Pius X in *Quam Singulare* to lower the age of confession from 12 – 13 to 7 – 8 years of age.

Especially after the publication of the two very good John Jay reports in 2004 and 2011 sponsored by the U.S. Catholic bishops, it was claimed in the United States that the outbreak of child sexual abuse during the 1960s and 1970s was a direct result of the changes and turbulence of the Second Vatican Council (1962 – 1965), abetted by the so-called sexual revolution beginning in the 1960s. These two factors were said to have led priests and religious to experiment in sexual activity. Another explanation given was libertine ‘liberalism’. Pope Emeritus Benedict XVI has very unfortunately given credence to this myth in a recent May 2019 letter. However, in addressing this claim, it must be noted that part of the answer as we shall see lies in the issue of access and opportunity, access to children, especially vulnerable children, and the opportunity to abuse by the opportunistic or situational offender.

The evidence is strong that the offending rate in Australia and elsewhere increased very markedly from the late 1950s, although this should not be exaggerated, if only because we have very little data about the offending rate in the first five decades of the twentieth century. Data in Austria found that offending dated back to the 1930s and peaked in the late 1950s and early 1960s before the Second Vatican Council (Lueger-Schuster et al. 2014). The relevant studies, especially the John Jay studies (2004 & 2011), the Dutch Deetman Commission report (2011) and the German study (2018) document that the offending rate before the late 1950s was not insignificant, although there is no way of quantifying it.

The John Jay studies found that very close to half of the offending priests in its data set were ordained before 1962 even though the study made 1950 as its baseline, and the Australian data supports this conclusion. There was a significant level of offending during the 1950s, an era when there would have been much underreporting. The rise in offending from the late 1950s, several years before the Second Vatican Council, to the late 1970s/early 1980s would seem, on the basis of the data available to the RMIT research team, to be attributable to the following nine factors:

- the greater access to vulnerable children in the aftermath of the Second World War, including the increased number of such children in well-intentioned and altruistic Catholic residential care institutions, including migrant children and children orphaned, abandoned and displaced as a result of WWII and wartime dalliances
- the marked increase in the Catholic population, particularly in migrant-receiving countries such as Australia with resultant pressure on bishops to fill empty vacancies in parishes, sometimes with less than suitable priests who simply should not have been ordained. Various case studies conducted by the Australian Royal Commission and other public inquiries revealed remarkable episcopal hubris and irresponsibility in ordaining some psychologically immature and even disturbed candidates against the advice of seminary staff

- the changing lifestyle of the priest with (i) the proliferation of one-priest parishes from the 1960s (ii) greater and easier mobility with free access to cars from the 1930s onwards together with, as a consequence, (iii) less monitoring of priestly activity and (iv) less accountability
- the increasingly positive image of the Catholic clericalised priesthood during the first half of the twentieth century, which attracted altruistic young men prepared to accept mandatory celibacy as part of the priesthood package without fully understanding the commitment
- the greater access to children through the growth of Catholic schools, especially boarding schools, and youth clubs such as altar servers' groups and the Boy Scouts from the 19<sup>th</sup> century
- the greater turbulence in the Catholic Church during and immediately after the Second Vatican Council, with the celibacy debate masking the deeper crisis about the role of the priest in a globalising, technologically advanced and more professional world, together with the resignation of many, often highly talented, priests – all this had a deeply unsettling effect across the whole Church and its priestly cohort
- the impact of the sexual revolution, particularly on psychosexually immature men, whose sexual immaturity and sexual deprivation led to distorted cognitive thinking about children and whose repressed sexual curiosity led to greater sexual experimentation
- a deep rejection by the Catholic faithful of the Church's theology of sexuality based on the interlinking of sexuality and procreation, especially following *Humanae Vitae* and its condemnation of artificial contraception in 1968, with the result that the Church was unable to offer a credible and acceptable theology of sexuality – a situation that is still with us today.
- an expectation during the 1960s and 1970s, especially among Catholic clergy and religious, and documented in the Dutch Deetman Report in the Netherlands, that the law of celibacy would soon be changed. This led to a conscious rejection of the celibacy rules by many clergy, and possibly to inappropriate behaviour with children

## **UNDERSTANDING CLERICAL SEXUAL ABUSE OF CHILDREN AND THE UNIFORM RESPONSE OF THE CATHOLIC BISHOPS GLOBALLY**

In endeavouring to understand the systemic factors why clerical sexual abuse of children happened in the Catholic Church, it is useful to focus on five constellations of variables: (a) the psychosexual abnormalities and situational factors (b) access to children and vulnerable adults (c) the uniform response of bishops and religious superiors (d) the cultural and praxis factors, especially the culture of clericalism and (e) pre-service and in-service training in the seminaries and houses of formation. In Appendix Two, we have presented two more theologically- and psychologically-based explanatory models by a German theologian and depth psychologist, Eugen Drewermann and an Australian priest theologian, David Ranson, now the vicar-general in the diocese of Broken Bay in North Sydney.

## The Psychosexual Abnormalities and Situational Factors

On the basis of our analysis, the findings, which fed into those of the Royal Commission, point overwhelmingly to the central conclusion: **that young and vulnerable Catholic children, especially boys, were in danger and at risk in the presence of psychosexually immature, psychosexually maldeveloped and sexually deprived and deeply frustrated male priests and male religious, particularly those who had not satisfactorily resolved their own sexual identity. Psychosexual maldevelopment was usually associated with the religious perpetrators themselves being sexually abused during their childhood – this occurred in about one third of the perpetrators** - the notorious Australian serial priest offender, Gerard Ridsdale, was abused by his uncle, cousin and a religious person.

Their offending behaviour was mediated by a set of cognitive and emotional distortions, denial mechanisms and neutralisation techniques that were generated by macro-level theological substrates of (a) a patriarchal imaginary of God that lacked closeness and intimacy, (b) a sacrificial theology of priesthood and religious brotherhood based on their vocational calling and divine chosenness, and (c) an essentialist and flawed theology of human sexuality, and by a set of psychological realities including: (i) unresolved sexual identity, (ii) an ungrieved loss of sexual intimacy in their celibate commitment, and (iii) overwhelming feelings of emotional loneliness.

As well, priest and religious offenders were often in stressful situations. The 2018 German study neatly encapsulates the following indicators: (i) a general overburdening with official duties or problems in the exercise of their ministry (ii) isolation (iii) substance abuse (alcohol, medicines, illegal drugs etc.) (iii) inadequate social skills (e.g. dealing with parishioners) due to immaturity or psychological abnormalities and (iv) particular stress or significant changes or specific difficulties related to their personal circumstances such as financial problems, illness and caring for or death of relatives.

The failure to satisfactorily resolve their own sexual identity was especially so if these priests and religious were confused or in denial about their homosexual orientation while training and operating in a profoundly homophobic Church environment. There was little psychological evidence that the priest and religious offenders were suffering from any psychotic illnesses. In fact, it indicated that most of the offenders were talented and attractive men, although a minority clearly had significant personality defects. They were found to be better educated and had higher IQs than the average sex offender. They came from intact families but there was evidence of a pattern where discussion of sex was taboo, where the father was generally distant and aloof, perhaps alcoholic or physically abusive, while the mother was smothering, perhaps vicariously covering up her own unhappiness through her son whose priesthood would raise the social status of herself and her family.

### *Homosexuality and the Catholic Church*

It is necessary to discuss homosexuality and homophobia from various perspectives because many of the offending priests and religious had a homosexual orientation, which they struggled with but never maturely resolved. The Catholic moral theological tradition has been consistent in rejecting homosexual behaviour, based partly on Scriptural texts (esp. *Gen.* 19, 1 – 29, *Rom.* 1, 24 – 27, 1 *Cor.* 6, 10, 1 *Tim.* 1, 10) and principally on natural law theory. The 1994 *Catechism of the Catholic Church* states that ‘basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that “homosexual acts are intrinsically disordered”’. It goes on: ‘They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved’ (*Catechism of*

*the Catholic Church* 1994: para. 2357). Much in this statement is deeply problematic. Professor Alexander, Emeritus Professor of Biblical Studies at the University of Sheffield, suggests that the Bible says nothing about homosexuality as we understand it today (Alexander 2015); the condemnation is generally about gay prostitution.

Historically, the issue of homosexual behaviour has been discussed in the context of ‘sodomy’ and ‘sodomites’, the word derived from behaviour in the Biblical city of Sodom as a metaphor for homosexual behaviour and vice (*Gen. Chs. 18 & 19*). It was developed over centuries well before the emergence of concepts such as sexual orientation, sexual preference and same-sex attraction. The core argument in the Catholic tradition against homosexual behaviour is that it is against the natural law. This reflects the human acts-centred moral theology/philosophy of the Catholic tradition, which is not complemented by a relational ethic. It comprehensively rejects the lived experience of gay people. It is also the theological basis for homophobia and discrimination by the churches which is allowed under the exemptions contained in the Australian equal opportunity legislation acts at Federal, State and Territory levels (Bouma, Cahill, Dellal & Zwartz 2011).

In recent decades, the Church has increasingly accepted the presence of conscientious gay people in its own ranks, not least in the priesthood. It has more transparently moved to a position that they must be accepted ‘with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided’ (*Catechism of the Catholic Church* 1994: 2358). In other words, love the sinner, hate the sin.

There are still many senior Catholics who believe that same sex attraction can be changed. A notable exponent of this view is the US Catholic Medical Association ([www.cathmed.org](http://www.cathmed.org)) whose 1999 policy statement affirms that ‘early identification of at-risk children (to same-sex attraction), along with appropriate psychotherapy and parental support, are key factors leading to successful prevention and treatment of the emotional pain in these children and adolescents’ (Homosexuality and Hope 1999: 2). Kinney (2016) writing in the official journal of the US Catholic Medical Association, suggests that the argument that homosexuality is normal is not supported by the scientific evidence, adding that he sees it as a mental disorder.

The official Catholic position, deeply contested in many parts of the Church, is that all gay people are called to live lives without sexual expression: ‘By the virtues of self-mastery that teach them inner freedom, at times by the support of disinterested friendship, by prayer and sacramental grace, they can and should gradually develop and resolutely approach Christian perfection’ (*Catechism of the Catholic Church* 1994: para. 2359). Catholic gays are required to live a life of enforced celibacy. As the data attest, priests with a gay or confused sexual identity were deeply impacted by these moral dictums even though they felt called to the priesthood but were operating in a deeply homophobic environment. Some, unfortunately, became offenders, having failed to resolve their sexual orientation in an adult, mature way.

The Final Report of the Australian Royal Commission stressed that research suggests that child sexual abuse is not related to sexual orientation and pointedly adds, “Vatican documents that link homosexuality to child sexual abuse (by clerics) are not in keeping with current understandings about healthy human sexuality” (Executive Summary, Report of Royal Commission: 68). This report, and every other significant public inquiry trenchantly insist that homosexuality is NOT the cause of the sexual abuse of children. There are many well-integrated and mature gay priests who do not abuse children.

## **Cognitive Distortions, Denial Mechanisms and Techniques of Neutralization**

The various studies also indicate that the cognitive styles of the offenders were much more distorted than those of non-offending priests and brothers, and these distortions were multilayered. As well, their mechanisms of denial and their techniques of neutralizing and ensuring the silence of the child victims had a religious overlay. More details are given in Appendix Three.

Aside from the cognitive distortions held by all child sexual offenders such as “having sex with children is a good way for adults to teach them about sex”, in the case of religious offenders another layer of cognitive distortions was found that was driven by psycho-spiritual and theological factors and the offender’s wilful suspension of their publicly espoused moral standards. Examples of such justifications and rationalizations were, “When God called me, he knew what I was like, what my needs were”, “I have a right to love and affection because I spend my life doing good for others” and “God will look after this particular child and see that it comes to no harm; it will have its special protection”.

Regarding denial of responsibility, the two best studies found the offenders blamed their offending behaviour on such things as their alcoholism, mental health problems, their parents, their need for intimacy and their sexual orientation. Such denial more likely leads to persistence in offending.

In terms of neutralizing and silencing the child, the Queensland Forde Report (2007) gives a very illustrative example of the underlying theological issues from the perspective of a young victim:

‘Father told me it wasn’t a sin as I was one of God’s chosen children and that God made boys to be special so that those who did God’s work were not led into the temptation of sinning with women. I was told by him that I was to say nothing to anyone because God would be very angry with me for revealing his secret ways’.

### **(a) Access to Children and Situational Opportunity**

Another part of the explanatory jigsaw is that foundational to the sexual and emotional abusing of children and their pre-offence grooming is having access to children or being able to manufacture access to children. There is a fairly direct correlation between religious offending and having access to children.

However, the unfortunate reality is that over the past several centuries, access to children, particularly vulnerable children, by priests and religious brothers and sisters has increased exponentially. We have already drawn attention to this. One major factor was the growth in educational opportunities for children and particularly the massification of schooling which occurred at different rates in the various nations during the nineteenth and twentieth centuries. This led to the founding of many male and female religious orders with a specific charism for schools teaching, beginning with the Piarists in the early sixteenth century who immediately had a serious sexual abuse problem that was poorly handled and the significance of which was not properly recognised. Secondly, it also led to the formation of the parochial primary schooling system attached to the geographical parish and of secondary schools usually run by religious teaching orders. The coverage of the Catholic schooling system in countries such as Australia and Ireland was very extensive, whereas coverage was less in countries such as Italy and the United States, because of the stricter provisions of the Church-State relationship, and hence offending seems to have been proportionally less.

Alongside this schooling expansion was the development of residential institutions for orphaned and vulnerable children. Religious orders founded with the best of intentions to care for children and



families were inevitably attracted to this work of charity, and in Australia the Queensland Forde Inquiry (1999) and the two Senate reports into the child migration program (2001) and children in residential care (2004) showed that Catholic male and female religious orders were at the forefront of receiving funding from the State to care for the children. The State came to rely on the religious orders for solving their child welfare problems and subsequently underfunded them, especially in Ireland.

The Irish Ryan Report (2009) also highlighted how State funding became a convenient cash cow for Catholic religious orders through cross-subsidisation. In war-torn Europe, as the Dutch Deetman Report has documented, there were many orphaned children at war's end who became vulnerable in residential accommodation, and the Dutch bishops were aware of the abuse by religious by the mid-1940s. Some countries, however, such as the U.K. and New Zealand, followed a foster care welfare strategy earlier going back to the 1920s rather than relying only on large residential orphanages, and the offending incidence seems to have been less in these countries than Australia and Ireland, but there is no hard data. The male religious orders, as has been well documented in the Irish Ryan Report, were very reluctant to switch to a foster home care strategy and close down their orphanages, whereas the female religious orders moved more quickly.

The 2004 John Jay study for the U.S. bishops found in its very comprehensive study that the actual abuse occurred in the priest's residence (40%). This was not surprising in the gradual move to one-priest presbyteries that occurred in the second half of the twentieth century although in Ireland there was the custom for the curate to live separately from the parish priest in a satellite town or village. But it also occurred in the church or a chapel, probably more in the sacristy than in the confessional. Some offending occurred in the parish school and in holiday homes where the offending priest would take the victim by car or it may have occurred in some cases on specially arranged camps for children and young people. However, the introduction of cars for priests increased the possibility for offending in lonely, isolated places. In fact, the priest's car was itself a site for the committing of the sexual offence. As well, there were cases, as in the case of the Melbourne parish priest, Kevin O'Donnell, who transgressed the inner sanctum of family life and grossly betrayed the hospitality of Anthony and Chrissie Foster (Foster & Kennedy 2010) by sexually abusing their two young daughters upstairs in their bedrooms and then at school and in the church. Many similar cases have come to light across the world, including cases of priests incestuously abusing nephews and nieces, and in the infamous case of Fr Maciel Degollado, founder of the Legionaries of Christ, his own children as part of his ultra-secretive life. Priests leading double lives is part of the phenomenon we are addressing. And it was a Peruvian former nun and theologian, now living permanently in Auckland and teaching at the Good Shepherd College, who was the whistleblower on the founder and other senior figures in the Sodalitium Christianae Vitae.

For situational opportunities in Catholic residential institutions, there is less systematic evidence. But both the three Australian government inquiries and the one, voluminous Irish Ryan Report document how the offender's bedroom was often adjacent to the dormitory for the children who would be dragged into the bedroom where the offence took place, usually on a very regular basis, often as a punishment for a child's indiscretion during the day.

Another aspect to access regards the Child Migration Program in which 150,000 poor and orphaned children were sent to Australia, Canada, New Zealand and Southern Rhodesia over a 350-year period beginning in the early 1600s until the 1970s, according to a House of Commons' 2010 Select Committee on Health. The current UK Independent Inquiry into Child Sexual Abuse suggests there were only 549 children sent to New Zealand. Just over 6,000 were sent to Australia, including to the farming schools in outback Western Australia run by the Christian Brothers (see Cahill & Wilkinson, p. 150). This was

a well-intentioned but badly monitored program whose flaws were known to the British government in the 1950s.

### **(c) The Flawed Response of the Bishops and Other Religious Leaders**

Given the startling uniformity in the responses of the Catholic bishops as well as other religious leaders, the report of the Royal Commission excoriated the Catholic bishops as has every international report. Their failures and deliberate attempts to cover up the abuse were enmeshed in the secrecy and secretiveness at the heart of the governance of the Catholic Church. Little has changed. During the twentieth century, more and more secrecy provisions were imposed, beginning with the Secret of the Holy Office imposed by *Crimen Sollicitationis* in 1922 and later the imposition of the Pontifical Secret on all matters and persons associated with child sexual abuse by priests and religious. With the development during the 20<sup>th</sup> century of radio transmissions, newspapers, television and internet-facilitated social media and the ever more powerful dissemination of information, the Holy See became increasingly fearful of public scandal as did the bishops. The Holy See and diocesan bishops were always fearful of scandalising the Catholic faithful. And so they covered up to protect the image of the Catholic Church as an all-holy institution.

#### *Concern for the Priest Offender, Not the Victim*

The Holy See was always concerned that the accused priest and religious would not receive a fair trial, but the Vatican showed no concern whatsoever for the victims of the accused priests and their families. One aspect of the cover-up was the use of a casuistical approach to ethics which permitted veiled speech and mental reservations to protect an inviolable secret. In fact, mental reservation was wrongly used, according to one of the best known moral theologians of the second half of the twentieth century, Bernhard Häring (1963, 1967). Although Häring allowed that veiled language was permissible in order to protect an inviolable secret, he nonetheless held that one was obliged, ‘in virtue of one’s office’, to communicate information to others in order to prevent further errors and situations of moral endangerment. The bishops should have shared the information about offending priests and brothers with those who participated in the Church’s decision-making processes. This did not happen, as for example, when offenders were moved from diocese to diocese or country to country.

The refusal to accept accountability and transparency measures was seen in the lack of a research function within the Holy See that might have contributed to a process of issue identification. The 2013 Victorian Parliamentary Report, *Betrayal of Trust*, described the Catholic child sexual abuse scandal in terms of ‘noble cause corruption’ whilst our RMIT report has framed it in terms of selective moral disengagement by the bishops. Associated with all this were issues of communication and miscommunication, as seen in several case studies, especially in the dioceses of Melbourne and Ballarat, where the bishop, in the interests of protecting the good name of the offending priest and priestly solidarity, simply did not discuss the many sexual abuse offences with his most senior advisors.

#### *The Process of Selective Moral Disengagement*

Albert Bandura’s theory of selective moral disengagement seems most appropriate in understanding why much destructive behaviour has been perpetrated by good men such as bishops in the name of righteous ideologies, religious principles and nationalist ideologies. Bandura (2002) suggests that any rationalistic moral-based reasoning such as that based on natural law theory may be elaborated to the neglect of actual moral conduct. The regulation of moral agency is built on much more than moral reasoning. Any moral self-censoring process on the part of the bishops was able to remain disengaged

from the consequences, through re-imagining and re-framing harmful conduct as even honourable by very questionable moral justification, exonerating social comparisons, and sanitising language through euphemistic labelling.

Through action and inaction, Holy See officials, diocesan bishops, and leaders of religious institutes could minimise their role in causing harm to the victims and their families, through the diffusion and/or displacement of responsibility (e.g. through recycling the offender to other parishes or dioceses). Paraphrasing the aphorism of Edmund Burke, Bandura states that ‘The triumph of evil requires a lot of good people doing a bit of it, in a morally disengaged way, with indifference to the human suffering they have collectively caused’ (Bandura 2002).

#### **(d) Cultural and Praxis Factors – The Culture of Clericalism**

In understanding proper care and safeguarding practice, it is necessary to understand the cultural and praxis factors. In its many findings regarding religious institutions, the Australian Royal Commission listed the following cultural risk factors in institutions caring for children such as schools and orphanages whether run by the Anglican or Catholic Churches or the Salvation Army:

- Lack of understanding or awareness of child sexual abuse or its possibility
- Failure to listen attentively and sensitively to children, especially when attempting to disclose
- Failure to educate children about healthy and appropriate sexual development
- Prioritization of institutional reputation (as ‘an all-holy Church’) over the safety of children and the harm done to them
- Cultivation of a culture of secrecy and isolation
- Failure to see the prevention of child sexual abuse as a shared responsibility by all staff
- Failure to address racism and prejudice in an institutional culture
- Normalization of harmful practices (Royal Commission, vol. 2, p. 159)

The problems for the Anglicans were in the Church of England Boys’ Society and in their secondary schools, especially boarding schools. For the Anglicans, the risk factors included (i) weaknesses in structure and governance preventing a consistent response (ii) the role of the bishops and the failures of leadership (iii) conflicts of interest for bishops and other office-holders (iv) cultural issues, including forms of clericalism (v) the practice of forgiveness and confession and (vi) inadequate screening, selection, training and supervision of people in ministry.

For the Catholic Church, the contributing factors were (i) the individual pathology factors (ii) clericalism in all its facets (iii) the monarchical and feudal aspects of governance including lack of transparency and accountability of those in leadership and the lack of meaningful participation of the laity and especially of women in governance (iv) lack of leadership, including poor education for leadership (v) the failure of canon law and its secrecy provisions (vi) the poor selection, screening and inadequate initial formation of priests (vii) celibacy and the associated sexual dysfunction as the linchpin of the clericalist system (viii) the lack of oversight, support and ongoing training of priests and religious and (ix) the practice of the sacrament of confession and its cheap forgiveness which allowed perpetrators to minimise the impacts of their sexual abusing.

The Salvation Army was criticised for the questionable environment of its residential institutions with poor resourcing, the hierarchical leadership, the devaluing of children and its type of ‘muscular Christianity’. The abuse was much more committed by employees than by Army officers.



The Jehovah's Witnesses were criticized for the absence of women from their decision-making processes, their separateness from the world and their two-witness rule based on Deuteronomy 19, 15 which maintains a person can only be sanctioned if the offence has been observed by two witnesses.

Having said that, I think that the Report should have emphasized much more the fact that 59.0 per cent of Catholic priest offenders had only one claim of redress against them. This brings up the issue of serial priest predators with dozens of victims who were about 3 – 5% of all Catholic priest offenders, about 20 – 30 in Australia, and this is supported by the U.S. evidence. It also brings up the issue of desistance, as to why religious offenders stopped offending (Cahill & Wilkinson 2017). As well, whilst false and unproven allegations are a smallish part of the overall picture (estimated 3 – 6 per cent of all allegations), the Report should have said something about them, and perhaps a reference to the Australian bishop exonerated by a Perth court in a classic case of mistaken identity.

The Report should have given more attention to the whistleblowing role of support and advocacy organizations. The Catholic Church in particular needs to develop conversations with them. Another failure of the Commission was an apparent lack of interest in restorative justice and a failure to advocate for a healing strategy to be developed by each religious organization. The support group, *For the Innocents* ([www.forthetheinnocents.org.au](http://www.forthetheinnocents.org.au)), released in July 2018 a restorative healing strategy for a co-ordinated response built around the theme of *Restoring the Face of Jesus* (Mt. 18, 10-11). The 22 strategies envisage the appointment of chaplains for survivors, gardens of healing particularly in hotspot parishes where much abuse took place, and contritional eucharists – it has been sent to every Catholic bishop in Australia.

### **The Culture of Clericalism in the Catholic Church**

Much has been made in the various inquiries and reports and in much commentary of the culture of clericalism within the Catholic Church though the term is rarely fully described. Similar features are found in the Anglican Church but the inclusion of women in the Anglican priesthood and episcopacy has significantly diminished the clericalist influence. The German Catholic Bishops' 2018 study defined it as “an hierarchical-authoritarian system that can lead the priest to adopt an attitude of dominating non-ordained individuals in interaction because he holds a superior position by virtue of his ministry and ordination”. The Report of the Australian Royal Commission reported the evidence of the US Dominican canon lawyer, Dr Thomas Doyle, who became the first whistleblower from the vantage of his job in 1984 in the Papal Nunciature in Washington and who identified the following elements of the culture of clericalism (Report, Vol. 16, Book 2: 615):

- The vocational belief that all priests are unique and special because of the supernatural effects of priestly ordination
- Consciousness of a special bond of solidarity that exists among all priests and bishops because of the sacred nature of ordination
- Priestly authority which is derived from his role as sacramental minister and not necessarily connected to his ecclesiastical office
- The public perception of priests as men set apart and entitled to deference because of their vocational calling and who are entitled to respect and credibility because of their priesthood
- Life as celibates in a homosocial environment where they may interact with women and married people but their essential living environment is all male with no truly intimate relationships allowed

- Priests are part of a monarchical culture that is hierarchically stratified and which creates a clerical aristocracy
- Priests have a high degree of discretion in their behaviour and a very low degree of supervision and accountability
- Priests' official dress sets them apart and when exercising their official ministry at Mass and other sacramental celebrations they are the central focus of rituals that are generally medieval in nature

The Royal Commission itself identified a tightly interconnected cluster of systemic structural and cultural factors which contributed to the occurrence of the child sexual abuse and the poor institutional responses. These factors included:

1. Theological factors that included a patriarchal imagery of God, a Counter-Reformation theology of the Church as a *societas perfecta* rather than the Vatican II concept of the People of God and a Tridentine theology of priesthood based around the notion that upon ordination, a priest is ontologically changed
2. The culture of clericalism in the Church with its pedestalization of the clergy by the laity, the solidification of solidarity and the consequent abuse of truth and respect combined with clerical narcissism, a deferential culture of obedience and the interplay of power and powerlessness
3. The organizational structure and governance of the Church with the lack of transparency, accountability and openness as well as diocesan autonomy where each bishop acts independently
4. The limitations of canon law and the lack of understanding of external obligation to the wider community
5. The obligation of mandatory celibacy for Latin-rite priests, the Commission noting that the Eastern Catholic Churches who allow married priests (e.g. Maronite, Melkite and Ukrainian Catholic Churches), had virtually no sexual offending against children by its priests neither in Canada, the US nor Australia. The Commission found compulsory celibacy was a 'contributing factor' but not the cause of the clerical sexual abuse.
6. The failures in the screening, selection and initial formation of clergy and religious for ministry with no human formation and very little on the demands of celibate living
7. The severe lack of oversight, proper support and ongoing in-service formation in religious and pastoral ministry
8. A culture of secrecy in the Catholic Church with the aim to avoid public scandal and protect the reputation of the Church as an all-holy institution

### **(e) Pre-service and in-service training in seminaries and houses of formation**

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Priests, including offending priests and religious, were not well-served in their pre-service formation training by their eight or more years of preparation for ordination. Australia has always had to import priests from overseas and there were never enough seminarians to service the needs of a growing Church except perhaps during the 1930s and 1960s. Through the 1950s and 1960s, seminaries and houses of formation proliferated as dioceses and individual religious orders did 'their own thing' in terms of training for the priesthood and religious life and much duplication resulted. In 1900, it seems there were seven seminaries in Australia; by 1940 there were 30, and by 1960 there were 37 seminaries for the priesthood with 1,380 seminarians. By 1980, the number had declined to 27 with 456 seminarians,

including 307 diocesan seminarians. At December 2014, there were eight diocesan seminaries with 220 seminarians, over half (52.3%) of whom were overseas born or sourced, especially from Vietnam. There were 19 male religious houses of formation with an unknown number of seminarians.

Here in New Zealand, there were far fewer seminaries and houses of formation, often because candidates for the priesthood were sent to Australia and elsewhere, including to Rome. In 1950, there were four seminaries with 194 students. By 1960, there were three seminaries with 293 students and by 1990 the two seminaries had only 52 students. In 2017, there were two seminaries serving the six dioceses with 21 students and the Marist seminary with 5 students (see Appendix Six for more detail).

#### *Screening processes*

Our review of the literature, usually based on personal accounts of seminary life together with other documentation, found that until the 1980s screening processes for entry into training for the priesthood and religious life were inadequate and defective. There were screening processes in place in deference to Rome's continuing insistence but they were usually superficial. Many of the 27 Australian and international reports expressed misgivings about the screening processes and the use of personality tests whose limitations they were aware of. Such tests such as the M.M.P.I. cannot provide guidance as to whether a candidate has the capacity to live a celibate life though they can identify serious and less serious personality defects. Moreover, once entry had been achieved, there were well-documented cases where bishops ignored or overruled the advice of seminary rectors and other senior advisors and proceeded to ordain some quite unsuitable candidates. Also a very important issue was the recycling of seminarians through different houses of formation, or from one religious order to another or, more typically, from a religious house of formation to a diocesan seminary, or between seminaries. The danger of this recycling pattern was known about in Rome at the time of the Council of Trent in the 16<sup>th</sup> century, but the warnings were frequently ignored. In Australia the recycling problem seems to have been more prevalent in Melbourne than Sydney which has had fewer religious houses of formation.

Several recent good quality studies have demonstrated that the personality profiles of candidates for the permanent diaconate, usually married men, exhibit a more stable character than those entering the celibate priesthood. They were generally free of disabling neuroticism, addiction proneness and anger, while showing psychological attributes of adaptability, leadership capability and healthy ego strength (Gamino et al. 2007, Plante & Lackey 2007).

#### *Life in the seminary and curriculum content*

Until the 1970s, formation centres for the priesthood and religious life were usually situated in rustic settings, well away from the dangerous secular world and the possible seductive wiles of the feminine. Formation occurred in segregated, regimented and celibate clerical settings. They were based on obedience to the religious superiors and conformity to the system. They were generally happy places, filled with the natural exuberance of youth. One former priest, now a philosophy professor, has described the Springwood seminary outside Sydney as 'a place of innocence and youth, infused with a spirit of generosity'. And it must be acknowledged that they did produce many good, competent and pastorally minded priests – otherwise one cannot explain the pastoral success of the Australian and New Zealand Catholic Churches until recent times with the Australian 2016 and the New Zealand 2018 censuses highlighting the beginnings of the Catholic decline.

The seminary curriculum was heavily intellectualised and rationalistic, sometimes taught in Latin or with Latin textbooks. The current curriculum development principles of competency-based and work-integrated learning were not integrated into the teaching and curriculum philosophy. In recent times there has been some positive shift in this direction, but not nearly enough. In terms of knowledge, skills

and attitudes needed by a priest working in a parish, there was a serious mismatch between competencies and capabilities. The Rome-approved curriculum, known as the *Ratio Fundamentalis Institutionis Sacerdotalis* even in the latest version approved on 8<sup>th</sup> December 2016, seems more designed to produce professional philosophers and theologians than pastoral workers, parish community leaders, confessional counsellors, spiritual directors for lay people, family and community informal educators, and so on.<sup>1</sup>

#### *Preparation for the celibate lifestyle*

More serious from our perspective were the manifest deficiencies in the spiritual and psychological formation for the often arduous living of a celibate life. The religious entrant was acculturated into a clericalist hierarchy in which priestly and religious holiness was seen as superior to lay holiness, and consecrated virginity was seen as a higher calling than marriage because of the sacrificing of sexual intimacy. However, the preparation for a celibate life was minimal and usually entrusted to priests without any special training. Celibacy was simply accepted as part of the priesthood ‘package’ and presented in terms of sacrifice to a higher ideal of sexual purity and asexual fulfilment, and in imitation of the celibate Jesus. Serious discussion of sexuality never happened, and the psychological aspects were completely ignored.

## **DECLINE IN CLERICAL SEXUAL ABUSE SINCE THE 1980S**

In the studies of the various countries studied, including those for Australia, it is clear there has been a substantial decline in clerical child sexual abuse since the 1980s. Offences are still being committed, but rarely. However, this will not apply in developing countries where the veil of secrecy has not been lifted. In the view of the RMIT research team, based on a close reading of the literature, there are ten reasons for the decline:

- the high and sustained public visibility given to the abuse issue since the early 1980s - the media attention has had a severe mitigating and reforming impact
- the better child protection mechanisms now in place, including state legislation introducing mandatory reporting and reportable conduct, together with various Church initiatives, especially in Catholic schools
- the greater vigilance of Catholic parents and Church employees generally as a result of the publicity
- the declining number of active priests over the past four decades and the associated aging of the remaining cohort
- the dismissal of many at-risk priests and religious brothers from the clerical or religious life
- the almost total collapse of the altar-server system
- the substantial decline in the number of Catholics who regularly make use of the sacrament of Confession, reducing the risk of solicitation

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<sup>1</sup> There is much more that could be said on curriculum content but it is beyond the scope of this presentation. Both researchers have educational degrees and the lead researcher regularly supervises Ph.D. theses on educational curriculum topics such as in tourism education, youth education and language education as well as in the internationalisation of the curriculum.

- the closure of the majority of Catholic boarding schools, farming schools, orphanages and other Catholic residential institutions, particularly in the developed world
- the reduced interaction of students with Catholic priests in Catholic schools as schools have become more professionalised and more carefully monitored
- the partial reform of the selection processes for admittance to seminaries and houses of formation, especially in the developed countries, and the inclusion of human formation elements in seminary curricula.

Although the decline in offending is apparent in Australia, the Catholic Church has only belatedly in 2017 imitated Catholic churches in other major comparative countries by putting in place safeguarding mechanisms in every parish, or by setting up better monitoring or training mechanisms, or by establishing special initiatives such as hotlines and helplines (as in Germany and Ireland). In relation to the Catholic churches outside Australia, probably the leading three countries in respect to preventative measures are Ireland, the UK and the US. We shall return to this care issue.

The important question has now become: is the phenomenon of child sexual abuse by priests and religious likely to re-appear and increase in the short- or long-term? Frankly the answer is unclear. The Irish and North American evidence is that sexual abuse by priests and religious is still occurring, although numbers of cases are very small. In his June 2019 covering letter to the annual report addressed to Cardinal DiNardo (the chair of the US Catholic Bishops Conference), the chair of its US National Review Board Child and Youth Protection, Francesco Cesareo, warned that “the current allegations (of clerical sexual abuse of children) should not be considered by bishops as a thing of the past or a distant memory” in warning against complacency.

One speculative hypothesis is that the phenomenon might re-appear several decades from now after the current crisis has receded into the past, simply because the underlying systemic and institutional issues have not been addressed. Despite even the most stringent checks, it might happen that an offending priest or religious is recycled to Australia from an overseas country. In the USA, not a few overseas-sourced priests, especially from the Philippines and India, have been charged and convicted of child abuse. Another hypothesis is that clerical dysfunctionality will continue to manifest in different ways in different times and places, whether in various forms of mental illness, or alcoholism, or sexual abuse. There is not the historical or contemporary data to be able to determine the issue.

## **PROVIDING TRANSFORMED CARE IN FAITH-BASED INSTITUTIONS: RECOMMENDATIONS OF THE AUSTRALIAN ROYAL COMMISSION**

The Australian Royal Commission made 58 recommendations pertaining to religious institutions, of which 27 were applicable to all. However, their implementation should be seen in the context of the establishment of the National Office of Child Safety which in 2018 was located in the Department of Prime Minister and Cabinet as well as the other pertinent recommendations.

It recommended that all religious bodies with their affiliated institutions should adopt the Royal Commission’s 10 Child Safe Standards in a consistent approach working closely with relevant state and territory oversight bodies (recs 16.31 – 16.35). In highly regulated sectors such as schools and out-of-home care services, religious agencies should report their compliance with the 10 Standards to the religious institution (16.35). All religious leaders should be provided with leadership training in child

safety (16.36) together with mechanisms in place for receiving relevant professional expertise (16.37) and they need to be accountable to an appropriate authority concerning child safety (16.38) as well as provision for managing conflicts of interest (16.39). Any institution with children in its care should be provided with age-appropriate prevention education for the children, including about the power and status issue (16.40). Family and community should be involved in commenting and evaluating child safety policies (16.41).

All candidates for religious ministry should undergo external psychological testing (16.42) and have undergone training that equips them with an understanding of the 10 Standards, ethical and boundary issues, how to work with children and understanding the impact of child sexual abuse (16.43). All people in ministry should have effective management and oversight with annual appraisals (16.44) with independent professional supervision (16.45). People from overseas who come to work in religious ministry need to be properly screened, trained and professionally supervised (16.46). All people in religious ministry should undertake regular training (16.47).

Regarding confession and children, it should be conducted in an open space within a clear line of sight of another adult (16.48). Codes of conduct should equally apply to people in ministry and to lay people, including volunteers (16.49), covering (i) the kinds of allegations or complaints that should be reported and to whom (ii) the identification of inappropriate behaviour, including grooming (iii) the recognition of the physical and behavioural indications of child sexual abuse and (iv) the serious nature of complaints about abuse (16.50). Recommendations 16.51 – 16.55 cover the handling of complaints and removal from ministry while 16.56 deals with permanent removal from ministry of any religious minister convicted of any abuse offence. Rec. 16.57 deals with the situation where persons attending religious services or activities who have been convicted or have substantial allegations should have the level of risk assessed and managed (16.57). The last recommendation (16.58) deals with the establishing of a national register by each religious organization.

Five recommendations pertained directly to the Anglican Church regarding a uniform episcopal standards framework that ensures the accountability of bishops to an appropriate authority (rec. 16.1), the management of actual or perceived conflicts of interest (16.2), the amending of a code of conduct for lay people to incorporate offending against children (16.3). The Church should adopt a national approach to the selection, screening and training of ordination candidates (16.4) and ensure all in pastoral ministry undergo mandatory, regular professional development, undertake mandatory professional supervision and undergo regular performance appraisals (16.5).

The Australian data highlighted that child sexual abuse and its mishandling by the Jehovah's Witness elders was a serious problem for this small religious group. There were two case studies (29 and 55). The high incidence has been confirmed in a recent study by the UK's Independent Inquiry into Child Sexual Abuse where 11 per cent of all victims of religious perpetrators belonged to the Jehovah's Witness faith. The Royal Commission recommended they abandon their two-witness rule in cases involving complaints of child sexual abuse (rec. 16.27), involve women in investigating and assessing allegations (16.28) and no longer require its members to shun those who disassociate themselves as a result of child sexual abuse allegations they have made (16.29).

The Australian Royal Commission conducted one case study of Jewish Yeshiva congregations in Melbourne and Sydney and made one recommendation that all Jewish institutions should ensure that their complaint handling policies explicitly state that the *halachic* concepts of *mesirah*, *moser* and *loshon horo* do not apply to the communication and reporting of allegations of child sexual abuse to police and other civil authorities (16.30).



The 21 recommendations in respect of the Catholic Church encompassed the following aspects. Eight recommendations (16.9 – 16.17) were made in respect of Catholic canon law, including rewording specific canons as child abuse ‘delicts’ and they should be defined as against the child, not as a moral failing of the priest and redefining a minor as under 18, not 14 years of age; abrogating the pontifical secret as applying to child sexual abuse; removal of any time limit for the commencement of canonical actions in relation to child sexual abuse, including retrospectively; removal of the imputability test so that a paedophilic diagnosis is not relevant to the prosecution of or penalty for an offence related to child sexual abuse; that canon law be given effect for permanent removal from ministry and dispensation from religious vows; the establishment of an Australian canonical tribunal for trying canonical cases against clergy; that Vatican Congregations and canonical appeal courts always publish decisions with written reasons for matters in relation to child sexual abuse and the removal of the canonical requirement to destroy relevant documents after ten years or upon the death of the cleric.

A major recommendation is that the Australian Catholic Church conduct a national review of the governance and management of dioceses and parishes (16.7). This review has now commenced. Given the Commission’s concern about episcopal quality and decision-making capacity, it was recommended that the Australian Catholic Bishops Conference (ACBC) request the Holy See to publish its criteria for the selection of bishops and establish a transparent appointment process (16.8).

The Royal Commission came to the conclusion that mandatory celibacy for the priesthood was ‘a contributing factor’ to clerical sex abuse, and hence recommended that the ACBC request the Holy See to allow voluntary celibacy for diocesan priests as well as making one other recommendation designed to safeguard the healthy living of a celibate life (rec. 16.18 – 16.19) – nothing has been heard about this request. The Australian Catholic Bishops’ Conference and Catholic Religious Australia should adopt a national protocol for the screening of candidates for the priesthood and religious life as well as developing, evaluating and continually improving selection, screening and training of such candidates, including drawing on broad-ranging professional advice (rec. 16.20 – 16.21). This process would also include information about all the guideline documents for all those in pastoral ministry (16.23) and a review of current models of initial formation so as to promote pastoral effectiveness and protect against the development of clericalist attitudes (16.24).

## **CATHOLIC SAFEGUARDING INITIATIVES IN COMPARABLE COUNTRIES**

The Catholic Church authorities in some comparable countries have transparently put in place safeguarding mechanisms in every parish, establishing a professional accreditation system of all clergy in active ministry, insisting on ongoing training for annual accreditation with professional mentoring and monitoring programs, or adopting special initiatives such as hotlines, as in Germany and Ireland. Till now the three leading countries in respect of such initiatives are Ireland, the UK, and the USA. The Australian equivalent body is modelled mostly on the Irish model.

### *Safeguarding children in Ireland*

In Ireland (the Republic and Northern Ireland), the Catholic bishops have established the National Board for Safeguarding Children in the Catholic Church ([www.safeguarding.ie](http://www.safeguarding.ie)). Since 2011, the Irish bishops have established the *Towards Healing* process, with the Towards Healing Counselling and Support Service, to replace the Faoiseamh Counselling Service. From 1996 until 2011, this service provided 316,358 counselling sessions to 4,820 clients, including secondary victims. One principal focus has been on the auditing of dioceses and religious orders which are published on its website. In

September 2015, it published the review of child safeguarding practices of 43 religious orders (8 male, 35 female), making detailed recommendations as appropriate. In 2019, it has begun another round of audits to ensure compliance with the established child safety standards. A new initiative was to provide training in good child safeguarding practice to Irish missionary priests and volunteers working in countries such as in Africa and Asia. In its 2018 Annual Report, it details that it received 143 new notifications against priests and religious of which 59 per cent concerned sexual abuse, usually of a historic nature.

Each year it receives many thousands of calls on its Helpline, and provides face-to-face counselling. Its advocacy service dealt with many different matters, connecting clients to a variety of services, including financial, homelessness and educational services, while some of its clients are engaged in its Restorative Justice process. It meets regularly with the Irish Garda police and TUSLA, the government child and family agency and provides training for clergy, current trainers and volunteers. It also commissioned two reviews to assess the effectiveness of its services and its governance and organizational arrangements (National Board for Safeguarding Children in the Catholic Church 2015).

Again, in Ireland, a special role is being played by the One-In-Four organisation, founded in 2007 by a senator who had himself been abused by a friar in the early 1980s as a teenager. It is so-named because about one quarter of the adult Irish population has experienced child sexual abuse, mostly in the family.

#### *Safeguarding children in the UK*

In the UK, the National Catholic Safeguarding Commission has been operating since 2008 following the 2007 Cumberlege Report. It oversees the Catholic Safeguarding Advisory Service with its offices in Birmingham, and operates on providing a 'Care Pathway'. The Catholic Safeguarding Advisory Service ([www.catholicsafeguarding.org.uk](http://www.catholicsafeguarding.org.uk)) has promoted appreciation of the notions of 'institutional grooming' and 'approach explicit pathways' in organisations where there can easily be an abuse of trust, power and authority and there is ready access to children and adolescents. More recently, a strategic plan has been outlined called *Towards a Culture of Safeguarding*. This includes the appointment of a safeguard representative in every parish – 96 per cent of parishes have been and remain compliant. There is also a national training program. The National Safeguarding Commission's 2018 annual report revealed that in 2017 152 new allegations had been made against 118 individuals, a figure that has increased each year from 79 in 2014 - 52 per cent were against priests, 13 per cent against male religious and 4 per cent against female religious. While there are no figures to assess the prevalence of the sexual abuse problem within the UK Catholic Church, there is much to commend its strategy, which has reached down to almost every parish. Also focus has switched to safeguarding mechanisms in respect of parishioners convicted and released, and those credibly alleged against.

#### *Safeguarding children in the US*

In the US, an extensive system of child and adult safeguarding has been put in place, reaching into parishes and schools. In June 2019, the annual report of the Secretariat of Child and Youth Protection of the USCCB and its US National Review Board was published, entitled *The Implementation of the Charter of the Protection of Children and Young People*. In his letter to the chair of the US Catholic Bishops Conference, Cardinal DiNardo, the Board chair, Francesco Cesareo, noted that the 2018 defrocking of ex-Cardinal Theodore McCarrick and the publication of a Pennsylvania Attorney's report had led to a rise in allegations. Most allegations were historical, but 26 allegations had been made by current minors (12 males, 14 females); seven had been unsubstantiated.

In their 2019 Annual Report, the US bishops' National Review Board and its Secretariat of Child and Youth Protection revealed the results of their audit which showed: 99.2 per cent of priests, 99.1 per cent



of educators and 98.1 per cent of volunteers had received safe environment training; 93.1 per cent or 3.946 million children had received safe environment training in parishes and schools and in 2018, 858 allegations had been made in dioceses and eparchies, a rise of 133 per cent over the previous year, and 186 against religious institutes, a rise of 200 per cent

## SPECIAL ISSUES

### Mandatory Reporting and the Seal of Confession

Recommendations 7.3 and 7.4 in Volume Seven of the Royal Commission's Final Report deal with the vexed issue of mandatory reporting and religious confession, a religious practice followed especially by the Anglican, Catholic and Orthodox Churches. Some detailed historical background to the issue of the confessional seal in the Catholic context is given in Appendix Five.

The Royal Commission examined both these matters, and its *Criminal Justice Report* recommended the introduction of a 'failure to report' offence (Rec. 33) and in Volume 7, *Improving institutional responding and reporting recommendations* it made 6 recommendations (7.1-7.6) on mandatory reporting including these:

**Recommendation 7.3:** State and territory government should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, [they] should also include the following groups of individuals as mandatory reporters in every jurisdiction: ... (e) people in religious ministry.

**Recommendation 7.4:** laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession (Rec. 35 of *Criminal Justice Report*).

During the public hearings for Case Study 50: Institutional review of Catholic Church authorities (6-24 February 2017), the evidence given by the Catholic bishops and canon lawyers concerning what was covered by the 'seal of confession' was confused. Rec.16.26 in the *Final Report* therefore states:

The Australian Catholic Bishops Conference (ACBC) should consult with the Holy See, and make public any advice received, in order to clarify whether: a) information received from a child during the sacrament of reconciliation that they have been sexually abused is covered by the seal of confession; and b) if a person confesses during the sacrament of reconciliation to perpetrating child sexual abuse, absolution can and should be withheld until they report themselves to civil authorities.

In response to a recent inquiry (30 August 2019) by Dr Peter Wilkinson to the ACBC, the General Secretary advised that the consultation between the ACBC and the Holy See concerning recommendations of the Royal Commission that the Conference has already referred to the Holy See is ongoing, and that during the Australian bishops' visit to Rome in June 2019, further consultation took place.

On 29 June 2019, the Apostolic Penitentiary issued a document titled *Note of the Apostolic Penitentiary on the Importance of the Internal Forum and the Inviolability of the Sacramental Seal* which was

published on the Vatican website.<sup>2</sup> The *Note* was approved by Pope Francis, and is most significant, for it contains very strict interpretations of the indispensability and inaccessibility of the seal of confession, including the following:

- The sacramental seal is indispensable, and no human power has jurisdiction over it, nor [can] lay any claim to it. It is indispensable for the sanctity of the sacrament and for the freedom of conscience of the penitent, who must be certain, at any time, that the sacramental conversation will remain within the secrecy of the confessional.
- The inviolable secrecy comes directly from the revealed divine right. It does not admit any exception in the ecclesial sphere nor, least of all, in the civil one.
- The Church has always taught that priests, in the celebration of the Sacraments, act in the very person of Christ the Head.
- The confessor must defend the sacramental seal, if necessary ‘to the spilling of his own blood’ (martyrdom).
- The seal is regulated by canons 983-984 and 1388, §1 of the Code of Canon Law, and explained in the *Catechism of the Catholic Church* (Para. 1467) which states that “every priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him”.
- The confessor is never allowed, for any reason whatsoever, “to betray in any way a penitent in words or in any manner” (C. 983, §1), just as “a confessor is prohibited completely from using knowledge acquired from confession to the detriment of the penitent even when any danger of revelation is excluded” (C. 984, §1).
- The sacramental seal includes “all the sins of both the penitent and others known from the penitent’s confession, both mortal and venial, both occult and public, as manifested with regard to absolution and therefore known to the confessor by virtue of sacramental knowledge”.
- The sacramental seal concerns everything the penitent has admitted, even in the event that the confessor does not grant absolution. If the confession is invalid or for some reason the absolution is not given, the seal must be maintained in any case.
- The priest becomes aware of the sins of the penitent “not as man, but as God”, to such an extent that he simply “does not know” what he was told during confession, because he did not listen to him as a man but, precisely, in the name of God.
- The confessor can therefore “swear”, without any prejudice to his conscience, to “not know” what he knows only as a minister of God.
- In the presence of sins that involve criminal offenses, it is never permissible, as a condition for absolution, to place on the penitent the obligation to turn himself in to civil justice. Where a penitent has been a victim of the evil of others, the confessor should instruct the penitent regarding his rights and the practical juridical instruments to refer to in order to report the fact in a civil and/or ecclesiastical forum to invoke justice.

Any political action or legislative initiative aimed at “breaching” the inviolability of the sacramental seal would constitute an unacceptable offense against the freedom of the Church, and constitute a violation of religious freedom. Professor Anthony Gray of the University of Southern Queensland subsequently examined whether laws removing the existing privilege or imposing a statutory obligation on clergy to report abuse, regardless of where the information was gleaned, would be constitutional,

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<sup>2</sup> Full text in English available

here: [http://www.vatican.va/roman\\_curia/tribunals/apost\\_penit/documents/rc\\_trib\\_appen\\_pro\\_20190629\\_foointerno\\_en.html](http://www.vatican.va/roman_curia/tribunals/apost_penit/documents/rc_trib_appen_pro_20190629_foointerno_en.html)

and concluded that there are good arguments in favour of validity and that a challenge would likely fail.<sup>3</sup>

In Australia, Tasmania and the ACT have already enacted legislation to give force to the Royal Commission's recommendations 7.3 and 7.4 and Victoria recently introduced the *Children Legislation Amendment Bill 2019* to add people in religious ministries to those mandatory reporters who must report when they form a belief on reasonable grounds that a child is in need of protection, even when the belief derives from a disclosure in a religious confession.<sup>4</sup> The Bill passed through the Parliament on 19 September 2019.<sup>5</sup>

The Royal Commission found a serious issue at stake regarding children confessing their own sexual abuse in the sacrament and the confessor priest not acting on the information, even though the actual sin was not that of the child, and leaving the child in danger of further sexual assault. The other issue concerned confessions made by offending priests and religious brothers themselves to a confessor priest. Both Keenan (2012) and Winship (2012) refer to this issue. No confessor priest seems to have withheld absolution on condition that the perpetrator penitent first make a confession to criminal justice authorities or (as had happened in the past) to church authorities.

On balance, we, whilst accepting that the Catholic Church ought be allowed to maintain the seal of confession according to the dictates of the right to religious freedom, would accept that the Catholic Church in the spirit of negotiated accommodation needs to address publicly and in a formal setting the following issues in defending the preservation of the seal of the confession.

**Firstly** and most importantly, is the central question which dominated theological debate up until the 20<sup>th</sup> century: **how can the obligation of the seal be reconciled with the precept of charity, which mandates that we should shield our neighbour against physical and spiritual injury to the best of our ability?** Should the integrity of the seal take priority over the integrity and safety of the child? The negative response to these questions is based on the claim that the information was beyond human knowledge.

**Secondly**, in the spirit of receptive ecumenism, should the Catholic Church examine and accept the current Anglican practice in Australia and elsewhere regarding the confessional seal and the confessing or disclosing of child sexual abuse

**Thirdly**, it needs to address in its confessional practice the issue of so-called cheap forgiveness, examining the issue of the penance given and the restitution involved.

**Fourthly**, it needs to address the suggestion that confession be delayed from 7 years of age until 12 – 13 years of age as some German and American bishops were requesting the Holy See to allow in the early 1970s.

**Fifthly**, it needs to consider the use of the notion of “reserved sins” where only a bishop or a pope can forgive the particular sin, such as heresy or desecrating the consecrated host.

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<sup>3</sup> Gray, A “Is the Seal of the Confessional Protected by Constitutional or Common Law?” in *Monash University Law Review* (Vol.44, No. 1, pp. 115-150

<sup>4</sup> A background to the Bill by Moores Legal is here: <https://www.moores.com.au/news/breaking-news-religious-and-spiritual-leaders-to-be-mandatory-reporters-wit>

<sup>5</sup> Cf. <https://knowmore.org.au/children-legislation-amendment-bill-2019-passes-vic-parliament/>

## Royal Commission and Redress

### Redress and Civil Litigation

The Royal Commission's *Redress and Civil Litigation Report* (2015) stated that "how survivors feel they were treated and whether they were listened to, understood and respected are likely to have a significant impact on whether they consider that they have received 'justice' and concluded that "a process for redress must provide equal access and equal treatment for survivors – regardless of the location, operator, type, continued existence or assets of the institutions in which they were abused – if it is to be regarded by survivors as being capable of delivering justice." It insisted that appropriate redress for survivors should include three elements: (1) direct personal response; (2) counselling and psychological care; and (3) monetary payments, and recommended that, as a general principle, "all redress should be offered, assessed and provided with appropriate regard to what is known about the nature and impact of child sexual abuse – and institutional child sexual abuse in particular – and to the cultural needs of survivors", and that "all those involved in redress, and particularly those who might interact with survivors or make decisions that affect survivors, should have a proper understanding of these issues and any necessary training."

While the Commission recognized that while it was very important for some survivors to re-engage with the institution in which they were abused, they should not be required to do so. It recommended that all institutions should offer to victim survivors, as a minimum: (a) an apology from the institution; (b) an opportunity to meet with a senior institutional representative and receive an acknowledgement of their abuse and its impact on them; and (c) an assurance or undertaking from the institution that it has taken, or will take, steps to protect against further abuse of children in that institution.

The Commission also recommended that counselling and psychological care by capable practitioners should be available to survivors throughout their lifetime, with no fixed limits, and ongoing assessments of the treatment's effectiveness. The same care should be provided to the survivor's family members if this is necessary for the survivor's treatment.<sup>6</sup>

### Justice in the criminal justice system

In the criminal justice system, the state has the central role in protecting the community's interest, and its agencies determine what can be investigated and prosecuted. The complainant, though vital to the process, does not control it, for it is not 'their' prosecution.

With civil justice litigation, however, it is the survivor/victim who has the central role, and can initiate an application for redress, pursue it to completion and decide whether to accept any redress or compensation offered. Little can happen without the survivor's active participation in and pursuit of the matter.

In Australia, states and territories also have statutory crime compensation schemes that allow victims of crime to apply for and receive monetary payments, as well as counselling and other services, from a dedicated pool of funds. Victims of institutionalised child sexual abuse may apply for redress under these schemes if they meet the eligibility requirements, and some survivors have obtained some form of redress here and found real benefit. However, higher monetary payments may be available elsewhere.

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<sup>6</sup> More detailed recommendations regarding counselling and psychological care are made in the report.

The Royal Commission's *Criminal Justice Report* outlined what many survivors wanted as 'justice' from the criminal justice system: (a) a criminal conviction and lengthy term of imprisonment for the perpetrator who abused them; (b) the public recognition that comes with a perpetrator's conviction, giving them acknowledgement, recognition, and a very public statement that they have been believed; (c) the knowledge that the police and the prosecution service had investigated their allegations, laid charges against the alleged perpetrator and done their best to present the evidence in a trial; and (d) the real benefit in telling their story to the police and feeling that they were believed. Even without a conviction, some found real benefit in being believed and supported by police and prosecutors, and having a chance to give their evidence and tell the court what happened to them; and even if an investigation was no longer possible or charges could not be laid, their experiences in being listened to, respected and believed by people in authority gave them a sense of 'justice'.

Initiating a criminal justice response for victim survivors – even if it goes no further than making a report to police – is important because they want to protect other children and ensure that the person who abused them cannot go on to abuse other children. Many also want to speak up on behalf of other victims who are unable to report their abuse.

The Commission did not favour using 'restorative justice' approaches<sup>7</sup> (i.e. processes to address the harm caused to victims) for the criminal justice response, believing it might not be available for or of assistance to many survivors because: (a) with the power dynamics and seriousness of institutional child sexual abuse offending, restorative justice approaches may only be suitable in a small number of these cases; (b) many survivors do not wish to seek a restorative justice outcome with the perpetrator of the abuse; and (c) given the frequent delay before reporting, many offenders will be unavailable or unwilling to participate in restorative justice approaches.

However, it considered it important that survivors do seek and obtain a criminal justice response to their abuse in an institutional context, in order to punish the offender for their wrongdoing and recognise the harm done to the victim; identify and condemn the abuse as a crime against the victim and the broader community; emphasise that abuse is not just a private matter between the perpetrator and the victim; increase awareness of the occurrence of child sexual abuse through the reporting of charges, prosecutions and convictions; and deter further child sexual abuse, including through the increased risk of discovery and detection.

Seeking a criminal justice response is also important for increasing institutions', governments' and the community's knowledge and awareness not only of the reality of such abuse, as well as the circumstances in which it happens. Therefore, all victims and survivors should be encouraged and supported to seek a criminal justice response and the system should not discourage victims and survivors from seeking a response. The Commission recommended that the criminal justice system be reformed to ensure that: (a) it operates in the interests of seeking justice for society, including the complainant and the accused; (b) criminal justice responses are available for victims and survivors; and c) victims and survivors are supported in seeking criminal justice responses.

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<sup>7</sup> Restorative justice can be defined as "a system of criminal justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large." New Zealand has been at the forefront of promoting restorative justice internationally. Cf. Australian Institute of Criminology: <https://aic.gov.au/publications/rpp/rpp127/defining-restorative-justice>

## Redress scheme

Representatives of institutions often become aware of child sexual abuse having taken place in their institution only when they receive an allegation from a victim or survivor, when a finding of an investigation of an allegation is made, or an alleged perpetrator admits to abuse.

When any redress scheme for institutional abuse is established, it will receive many applications based on allegations of abuse. The Royal Commission, in proposing the national redress scheme, made three recommendations: (1) the scheme should report any allegations to the police if it has reason to believe that there may be a current risk to children. And if the relevant applicant does not consent to the allegations being reported to the police, the scheme should report the allegations to the police without disclosing the applicant's identity (Rec. 73); (2) the scheme should seek to cooperate with any reasonable requirements of the police in terms of information sharing, subject to satisfying any privacy and consent requirements with applicants (Rec. 74); and (3) the scheme should encourage any applicants who seek advice from it about reporting to police, to discuss their options directly with the police (Rec. 75).

The Commission's recommendations on redress and civil litigation were not intended as an alternative to criminal justice for survivors, for it considered that they should have access to justice through both criminal justice responses and redress and civil litigation.

The purpose of monetary payments in redress is to provide tangible recognition of the seriousness of the harm, injury and injustice caused to the victim of abuse. Accordingly, the Commission developed a value matrix for assessing and determining monetary payments<sup>8</sup> with 'additional elements' to be factored in. It considered AUD\$10,000 as a minimum payment, AUD\$65,000 to be average, and AUD\$200,000 (later revised down to AUD\$150,000) to be the maximum for the most severe cases.

The Commission recommended that the Commonwealth Government establish a 'single national redress scheme' and negotiate with state and territory governments and all parties to the negotiations to ensure the necessary arrangements, and to have it operational no later than 1 July 2017. It also recommended a 'national redress advisory council' with representatives from survivor advocacy and support groups and made detailed recommendations on funding, eligibility, duration, publicity, application processes, institutional involvement, standards of proof, decisions on claims, offers and acceptance, reviews and appeals, deeds of release, support for survivors, transparency and accountability, interaction with alleged abusers, disciplinary processes and police. Estimates of likely participants totalled 60,000 persons, with 19,600 from Government-operated institutions and 40,040 from non-Government-operated institutions.<sup>9</sup> It also found that governments (federal, state and territory) might have to be the 'funder of last resort' for up to 28,300 survivors.<sup>10</sup> Applying the average payment to the indicative participant numbers, an aggregate total of AUD\$3.9 billion was indicated, less around AUD\$400,000 in payments already made to survivors/victims.<sup>11</sup>

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<sup>8</sup> For details of this approach, cf. Section 1.2.2 of Royal Commission into Institutional Responses to Child Sexual Abuse's *National Redress Scheme Participant and Cost Estimates* (July 2015). Full text available online at: <https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/national-redress-scheme-participant-and-cost-estimates-report.pdf>

<sup>9</sup> Ibid. Table 1

<sup>10</sup> Ibid. Table 2

<sup>11</sup> Ibid. Cf. Section 7 of Report.



While the scheme was being set up, the Commission recommended that institutions take documented steps to achieve independence in their own institutional redress processes, and that the state and territory governments introduce legislation to: (a) remove any limitation period applying to a claim for damages (with retrospective effect)<sup>12</sup>; (b) impose a non-delegable duty on certain institutions (listed) for institutional child sexual abuse, despite it being the deliberate criminal act of a person associated with the institution (to apply prospectively); (c) make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse (reverse onus of proof) (to apply prospectively); and (d) provide that, where a survivor wishes to sue for damages an institution which is set up as a property trust, that institution must nominate a proper defendant to be sued that has sufficient assets to meet any liability from the proceedings.

Item (d) was particularly relevant for Catholic dioceses, as all were established as diocesan trusts,<sup>13</sup> and the matter of identifying a ‘proper defendant’ was a central issue in Case Study 08: Mr John Ellis, Towards Healing and civil litigation of the Australian Royal Commission.<sup>14</sup> The Commission also recommended that both government and non-government institutions develop, publish and act on guidelines for responding to claims for compensation based on ‘model litigant’ approaches.

The archbishops of Melbourne and Sydney both told the Royal Commission that the Catholic Church should provide victims of child sexual abuse with an entity to sue and in November 2015 the ACBC’s Truth, Justice and Healing Council released new ‘Guidelines for Church Authorities in Responding to Civil Claims for Child Sexual Abuse’, to be operational from 1 January 2016 and designed to ‘promote justice and consistency’ in the way the Church handles child sexual abuse claims and conducts litigation. The Guidelines commit the Catholic Church to “assisting the claimant to identify the correct defendant to respond to the legal proceedings” and to granting access to records relating to the survivors, paying legitimate claims without the need for litigation, and participating fully and effectively in alternative dispute resolution processes wherever possible.

### **National redress scheme establishment**

After several years of negotiation, an *Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse*<sup>15</sup> was signed between the Commonwealth, State and Territory governments and the necessary legislation enacted. The Scheme became operational on 1 July 2018, with survivors of child sexual abuse able to approach the Scheme at any time until 30 June 2027. The

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<sup>12</sup> Removed in Victoria in July 2015.

<sup>13</sup> Cf. Diocese of Christchurch, Annual Financial Report for 2018: <https://chchcatholic.nz/wp-content/uploads/2018/10/2018-Diocese-Financial-Report.pdf>

<sup>14</sup> Cf. Section 6.11 of the Report of Case Study No. 8, available online at: <https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Case%20Study%208%20-%20Findings%20Report%20-%20Mr%20John%20Ellis%20-%20Towards%20Healing%20and%20civil%20litigation.pdf> The State of Victoria abolished the use of the so-called ‘Ellis defence’ in July 2018 and NSW has indicated it will follow Victoria: [https://advicelineinjurylawyers.com.au/wp-content/uploads/2018/07/ALIL-Legal-Check-Up\\_Winter-2018\\_web.pdf](https://advicelineinjurylawyers.com.au/wp-content/uploads/2018/07/ALIL-Legal-Check-Up_Winter-2018_web.pdf)

On 19 September 2019, the Victorian Parliament also passed the *Children Legislation Amendment Bill 2019* allowing survivors of sexual and non-sexual institutional abuse to apply to the courts to overturn unfair historical compensation payments. Cf. <https://rctlaw.com.au/legal-blog/2016/making-a-claim-against-the-catholic-church>

<sup>15</sup> COAG. Full text available at: [https://www.coag.gov.au/sites/default/files/agreements/iga\\_national\\_redress\\_scheme.pdf](https://www.coag.gov.au/sites/default/files/agreements/iga_national_redress_scheme.pdf)

Scheme's objects are "to recognise and alleviate the impact of past institutional child sexual abuse, and provide justice for the survivors of that abuse".<sup>16</sup> It provides the legislative basis for entitlement, participation, how to obtain access, offers and acceptance of redress, provision of redress, funding, funder of last resort and other administrative matters. It also covers 'release from civil liability', specialist support services, counselling and psychological care.

At August 2019, all governments and 51 non-government institutions, representing more than 40,800 individual sites, had joined the scheme.<sup>17</sup> The Catholic Church registered Australian Catholic Redress Ltd on 19 October 2018 to oversee the Catholic dioceses' engagement with the Scheme, and at 1 February 2019, 34 (of 35) dioceses and eparchies were participating, covering 99.8 per cent of the parishes, schools and agencies (5000 sites). However, at July 2019, some Catholic institutions had still not joined, including the St John of God Brothers (with the highest proportion of historical abuse among all religious congregations). Institutions have until mid-2020 to join, but they cannot be forced.

To 26 July 2019 the Scheme had received over 4,500 applications, made 313 Redress payments averaging AUD\$81,500, and made 130 additional offers for applicants to consider (they have 6 months).<sup>18</sup>

## THE NEW ZEALAND CONTEXT

Let us now examine the New Zealand context and its religious element. New Zealand is, in comparative terms, a very areligious country according to the 2018 census. Almost half of New Zealanders (48.6%) ticked the 'no religion' box. All the Christian groups declined except for the Pentecostals, Church of the Latter Day Saints, Evangelicals, Jehovah's Witnesses, Seventh Day Adventists, the Orthodox and the Churches of Christ. There was a corresponding increase in the number of Christians (not further defined) as there was in the non-Christian groups except for declines in the Buddhist and Judaic groups. Worldwide, about 85-90 per cent of the global population is religious, if not very religious.

The largest religious group were the Catholics with 471,030 adherents or 10.11 per cent of the total population, a decline of 37,407 or 7.4 per cent since 2006. Its highest ever percentage was 16 per cent in 1966. In Appendix Six, we have presented an historical and contemporary profile of the New Zealand Catholic Church based on the standard histories, the joint Catholic directories and yearbooks from 1860 to 1975 and subsequent Statistical Yearbooks of the Catholic Church (*Annuario Statisticum Ecclesiae*).

### *Early Catholic missionary effort in New Zealand*

The Catholic missionary effort in New Zealand began in 1838 with Bishop Pompallier and a group of Marist Fathers. The Marists have played a central and admirable role in the founding and maintenance of the New Zealand Catholic Church. However, from the perspective of this Royal Commission, their French foundation was not without considerable controversy. The initial founder of the Marist Fathers was Jean-Claude Courveille (1787 – 1866) who at his First Mass at La Puy in 1816 was joined by twelve seminary colleagues to form this new religious order. But Courveille was eased out of the order and Jean-Claude Colin (1790-1875) is acknowledged as the founder in Marist historical accounts. Courveille had credible sexual allegations against him, including being 'compromised with a young

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<sup>16</sup> Ibid. Part 2, s. 21

<sup>17</sup> Ibid. Part 7, s. 63

<sup>18</sup> At the time of preparing this presentation, media reports of delays in processing and court hearings were appearing.



postulant' in 1825 and he spent the rest of his days in Cistercian and Benedictine monasteries. He has subsequently been written out of official accounts, described only as 'the inspirer'.

In 2019, there are six dioceses (Auckland, Christchurch, Dunedin, Hamilton, Palmerston North and with Wellington as the metropolitan see). The *Annuario Statisticum Ecclesiae* of 2017 indicates there were 202 parishes, 287 diocesan priests, 182 religious priests, 39 permanent deacons, 116 religious brothers and 669 religious sisters. There are 189 Catholic primary schools and 50 Catholic secondary schools, teaching a total of about 90,000 students.

In considering the prevalence of child sexual abuse by New Zealand diocesan, religious priests, brothers and sisters, there is nothing to suggest in historical terms based on the prevalence in comparable countries that the offending rate of New Zealand diocesan priests would not be in the range from 5% - 7%. Among religious order priests, the prevalence is probably in the 2% - 5% range but it may be lower because few male religious priests had schools and youth ministry in their apostolic mission. New Zealand has always had a relatively high proportion of religious order priests compared to diocesan priests, certainly as compared to Australia. This would have a dampening effect upon the number of offending priests and the number of victims.

Moreover, amongst religious brothers it is likely to be less than the Australian average of about one in eight. Firstly, New Zealand was less impacted by the Child Migration movement from the UK and Malta. Secondly, New Zealand moved much earlier by several decades than Australia and the Republic of Ireland to move away from large-scale orphanages and other residential institutions to foster care arrangements which are also not without their problems. The exception, of course, are Catholic boarding schools but their number has greatly declined in the post-WWII period. Thirdly, the number of religious brothers in New Zealand was always relatively modest (116 in 2017 after peaking at 385 in 1966), and, most importantly, in the post-WWII period all Catholic orphanages have been sponsored by female religious orders. We remain unsure about the situation about the St John of God Brothers.

Accordingly, our conclusion is that, in proportional terms compared to similar countries, the offending rate for diocesan and religious order priests is probably much the same as for other comparable countries but lower for religious brothers.

#### *Care and Safeguarding in the New Zealand Catholic Church*

In 1993 the New Zealand Catholic Bishops Conference formulated its first policy document, leading in 1998 to the 43 page document, *A Path to Healing – Te Houhanga Rondo*. This was revised in 2007, with further amendments in 2010. In 2009 it established the National Office for Professional Standards. In 2017, the New Zealand Catholic Bishops Conference (NZCBC) and the Congregational Leaders Conference Aotearoa New Zealand (CLCANZ) produced *National Safeguarding Guidelines* which was endorsed not only by the bishops but by 44 religious congregations and the New Zealand Catholic Education Office. On March 5<sup>th</sup>, 2019, ten years after its founding the National Office launched its website (<https://safeguarding.catholic.org.nz>).

*A Path to Healing - Te Houhanga Rondo* is directed at the sexual abuse of children, adolescents and adults, and it is difficult to describe it as a child-centred document. Described as 'a living document', it reads as more focused on adult victims though the later *National Safeguarding Guidelines* are more child-centred. The overall policy is very diocesan-centred and follows an inhouse process – if a criminal investigation takes place, any process is ceased forthwith. It draws attention to a restorative justice approach, and commendably recommends the keeping of diocesan archival records, which goes against

Canon 489 of the 1983 Code of Canon Law which requires such sensitive records are to be destroyed after ten years or upon the death of the priest.

Each diocese has established a Sexual Abuse Protocol Committee with the appointment of a so-called Delegate to take charge of all issues, including investigating and assessing any allegation. No publicly available research study, including prevalence data, has been conducted. Whilst the National Office for Professional Standards has produced a useful safeguarding self-review tool, it seems not to conduct audits on dioceses and religious orders as in comparable countries. It would seem that this Royal Commission represents an opportunity for the New Zealand Catholic Church to update its policies and procedures. This would apply to all religious institutions.

### *Indigenous peoples*

The indigenous peoples are rightly a particular focus of this New Zealand Royal Commission. Information about child sexual abuse by religious and lay missionaries within Aboriginal and Torres Strait Islander communities was not a particular focus of the Australian Royal Commission as it had been, at least partially, treated in previous Royal Commissions such as the Stolen Generation report and other inquiry reports. Yet there were indications of it being a serious issue, especially because of the high offending rate within some Catholic religious orders who worked with indigenous communities, not least within the Benedictine New Norcia community in Western Australia, about which we still know very little. We know from the relevant Canadian and US websites of the seriousness of child sexual abuse by priests and brothers as well as serious physical and emotional abuse. In our 2017 report, we drew attention to the Catholic diocese of Fairbanks in the US State of Alaska where much sexual abuse was committed by Jesuit priests, lay brothers and volunteers.

However, the best source of evidence for horrendous amounts of child sexual abuse comes from the Canadian Truth and Reconciliation Commission. In December 2015, it released its final report, *Honouring the Truth, Reconciling the Future*. As a consequence, the National Centre for Youth and Reconciliation has been established at the University of Manitoba. The Commission focused on the residential schools established for the children of Canadian First Peoples such as the Inuit in Canada's remoter areas. During their 120-year history, an estimated 150,000 children attended these schools. Of these, 70,000 former students are still alive and an estimated 38,000 were sexually assaulted, including by religious assailants.

## **CONCLUSION**

According to psychologists, authentic religion is about believing, bonding, behaving and belonging and its beneficial personal and community outcomes have been empirically demonstrated by the social sciences (Saroglou 2011). In the emerging global and post-secular era, we live in a very religious world and research continues to demonstrate that religion, on balance, adds to personal well-being and national social wealth, including in Australia (see Cahill, Bouma, Dellal & Leahy 2004; Saroglou 2011). In addressing the interface between religion, spirituality, sexuality and deviance, this New Zealand Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions is dealing with very sensitive, complex and difficult issues. It needs to be recognised that fundamentalisms and pathologies can erupt in religious organizations and institutions (McLoon-Richards 2012). It needs also to be recognized that there is such a thing as bad religion and bad religious practice. A healthy society needs healthy religion, and the State in the governance and management of

religion and religious diversity has a responsibility to intervene when religious practice is producing harm. The right to religious practice is not an absolute and unfettered right, and both Australia and New Zealand have, unlike France and the US, moderate models of the separation of religion and state.

In the Christian tradition, children are seen as close to the mystery of God. Each and every child is embraced in God's infinite tenderness, and God is present in each of their lives. Parenting is not becoming any easier in a complex and interconnected world. For parents to have their patient, time-consuming and loving handiwork of rearing a child to adulthood, damaged or destroyed by abusing clergy and religious, is the very core of the evil of this religious tragedy. A recent statement by the Catholic Education Office of South Australia reflected how children, in their openness and trust and receptiveness, offer us a glimpse of what it is to be open to God (CESA 2015):

We see the grace of God at work in their sense of wonder at the beauty of the sea, a landscape or a flower; we see it in their enquiring minds, their search for knowledge; we see it when they are at play, exploring their imagination; we see it in their uncomplicated affection, trust and warmth; and we see it in their reaching out, in their sometimes surprising inclusion and care of others (CESA 2015: 7).

## APPENDIX ONE

# SHORT RESUMES OF THE TWO PRESENTERS

### **Professor Desmond Cahill, O.A.M.**

Educated in Australia at Corpus Christi College, Werribee and in Rome, where he gained his Licentiate in Sacred Theology at the Pontifical Urban University in 1970, Professor Cahill, B.A., S.T.L., M.Ed., Ph.D., worked as a Catholic priest for the Melbourne Archdiocese (1970 – 1976) before beginning his academic career majoring in educational and cross-cultural psychology at Melbourne and Monash Universities, subsequently being admitted to membership of the Australian Psychological Society. He is now Professor of Intercultural Studies in the School of Global, Urban and Social Studies at RMIT University in Melbourne. During his academic career, he has conducted major policy and program evaluative studies in schooling and youth issues for the Department of the Prime Minister and Cabinet, the Commonwealth immigration department and the Bureau of Immigration and Population Research and the Australian Human Rights Commission.

Since September 11<sup>th</sup> 2001, he has played a major role in researching and bringing together the various faith communities in Australia and across the world. He currently chairs the Australian chapter of the World Conference of Religions for Peace (WCRP), the world's largest interfaith organization, and represents Australia on the executive committee of the Asian Conference of Religion and Peace (ACRP) – at its Assembly in Incheon in August 2014, he was re-elected as ACRP's deputy moderator-general and one of its six co-presidents. He is a member of the Australian Partnership of Religious Organizations (APRO) and of the Victoria Police Multifaith Council. He served for many years on the Australian Catholic Bishops' Council for Pastoral Research as well as on the Ecumenical and Interfaith Commission of the Catholic Archdiocese of Melbourne. He also has been co-convenor of For the Innocents, a support and advocacy group for victim survivors.

Together with Professor Gary Bouma (Monash University) and Dr Hass Dellal (Australian Multicultural Foundation), he did the research study for the immigration department on *Religion, Cultural Diversity and Safeguarding Australia* (2004) in the aftermath of 9/11. The same research team subsequently was commissioned by the Australian Human Rights Commission to examine *Freedom of Religion and Belief in 21<sup>st</sup> Century Australia*, published in 2011. In 2011 he contributed two articles to the *Encyclopedia of Religion in Australia* on the structure of the Catholic Church and the interfaith movement.

Among his other major publications are (with R. Taft) *Initial Adjustment to Schooling of Immigrant Families* (1978), *Review of the Commonwealth Multicultural Education Program* (1984), (with J. Ewen) *Ethnic Youth: their Assets and Aspirations* (1987), *Intermarriage in International Contexts: A Study of Filipino Women Married to Australian, Japanese and Swiss Men* (1990), *Immigration and Schooling in the 1990s* (1996), *Missionaries on the Move: A Pastoral History of the Scalabrinians in Australia and Asia 1952 – 2002* (2004), and (with M. Leahy) *Constructing a Local Multifaith Network* (2004). In 2006, he was made an honorary fellow of the Australian Council of Educational Leaders for his work in immigrant, cross-cultural, interfaith and international education over more than three decades. In 2010, he was awarded the Medal of the Order of Australia for “services to intercultural education and to the interfaith movement”.

## Dr Peter Wilkinson

Peter Wilkinson, B.Ed., L.Miss., D.Miss. (PUG) received his primary and secondary education in Melbourne and completed his preparation for the Catholic priesthood with the Missionary Society of St Columban in Sydney. After ordination he did postgraduate studies in Missiology at the Pontifical Gregorian University in Rome gaining a Licentiate in 1963 and a Doctorate in 1971 with a thesis on Catholic missions in Burma (Myanmar). He completed language studies at the Universities of Paris (Sorbonne), Vienna, and Menendez y Palayo (Santander) and Yonsei (Seoul), received a Certificate in Interpreting from RMIT (1976), and was awarded a Bachelor of Education from LaTrobe University (1985). During his ministry as a priest, he taught at the Columban Society's seminaries in Melbourne and Sydney (1963-1968) and worked as a missionary in the Archdiocese of Seoul and Diocese of Andong in the Republic of South Korea (1971-1975).

Following his resignation from ministry in 1976, he worked in the areas of immigration, settlement, education, and multicultural affairs with the Good Neighbour Council of Victoria (Field Officer, 1976-1979), the Clearing House on Migration Issues at the Ecumenical Migration Centre (Director, CHOMI, 1979-1981) and at the Australian Institute of Multicultural Affairs (Senior Research Fellow and Chief, Community Education, 1981-1986). Following closure of the Institute in 1986 he established private companies conducting wholesale and retail commerce in the wine and liquor industry. He was elected president of the retail industry association in Victoria and served on the industry's national board (1998-2002). From 1998 he was closely involved in the deregulatory reforms instigated by the Victorian and Commonwealth Governments, and provided industry advice on legislative reforms. For his advocacy work on behalf of small business in the industry, he was awarded the Centenary Medal in 2001.

From 1977-81 as president of the Australia Korea Association, he organized the first Korean Film Festival in Australia, and collaborated with the National Gallery of Victoria for the Gallery's first exhibition of Korean Folk Art. He was a founding member of the Korean Catholic Community in Melbourne.

In 1985 he was invited to be a Visiting Lecturer in the Department of Theology: Mission and Ministry at Yarra Theological Union, a member college of the University of Divinity Melbourne, and from 1985-1999 offered courses in Comparative Religion, Ministry in a Multicultural Society, and Christian-Buddhist Dialogue.

On retirement in 2006 he joined Catholics for Ministry, a Catholic group concerned with reform of the Catholic Church. As part of his contribution, he undertook research into parish ministry in Australia and produced two reports: *Catholic Parish Ministry in Australia: Facing Disaster?* (2011) and *Catholic Parish Ministry in Australia: The Crisis Deepens* (2012). In 2011 he completed a report on *Catholic Synods in Australia: 1844-2011*. More recently he has written articles on parish ministry and religious demographic trends for *The Swag*, the magazine of the National Council of Priests. In 2011 he helped found the Melbourne-based group, *Catholics for Renewal*, out of concern for the Catholic Church's current situation and global well-being.

## APPENDIX TWO

# THE MAJOR EXPLANATORY MODELS IN COMPARATIVE PERSPECTIVE

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The explanatory models that have emerged since 1990, have been designed to understand and explain why perpetrators sexually assaulted children, and why Catholic Church leaders responded so equivocally and disastrously over many decades. The models have been developed by researchers based on their own research, clinical experience with perpetrators and/or their reading of the research literature. The models have focused both on individual and systemic factors.

The first model to emerge was that of Richard Sipe (1990, 1995), a psychotherapist and former priest, and a member of the Department of Psychiatry at Johns Hopkins University who had started gathering data in 1960. One of his favourite axioms is that of Solzhenitsyn: 'Evil is not a division between groups of people, us and them. It is a line that runs through each human heart'. Sipe's 1990 and 1995 books were very important milestones in understanding the sex abuse catastrophe. His model, based on his extensive clinical and survey data, revolved around four categories of sexual offender, each captured by a different 'lock':

1. The genetic lock, referring to biogenetic factors such as sexual orientation and level of sexual desire or libido
2. The psychodynamic lock, whereby factors within early object relationships coupled with early sexual overstimulation and experiences work together to lock priest offenders at one level of psychosexual development, or make them extremely vulnerable to regressing to a sexual attraction to minors
3. The social/situational lock, which focuses on the ecclesiastical institutional factors which foster a preadolescent stage of psychosexual development when boys prefer associating with their own gender, denying sex rigidly while exploring it secretly. If sexually activated and then disclosed, it can lead to possible suicide
4. The moral lock, which refers to another group of offenders who coldly and calculatedly divorce what they teach from what they stand for and how they act.

Sipe's model is interesting because he distinguishes between different groups of offenders, although he does so without sufficient elaboration (Sipe 1995). As we have already seen, the literature generally has been averse to developing religious offender typologies.

A second model is that of American priest psychologist, Monsignor Stephen Rossetti (1996). In his book, *A Tragic Grace*, based on his clinical experience with priest perpetrators, he outlines six psychological flags for identifying signs of possible offending in a priest. The flags are:

- Confusion about sexual orientation
- Childish interests and behaviour
- Lack of peer relationships
- Extremes in developmental sexual experiences
- Personal history of childhood sexual abuse and/or deviant sexual experiences
- An excessively passive, dependent and conforming personality



Rossetti's work emphasised salient issues about failures to resolve satisfactorily issues of sexual orientation and the centrality of personality deficiencies.

Another series of learnings came from another much published psychologist, Thomas Plante, again on the basis of his work over 25 years treating about 50 sex-offending priests. These learnings are that not all clerical sex offenders are the same; not all offenders receive the same treatment; that they are very human with many human troubles, challenges and pathologies and, lastly, quoting Senator Daniel Moynihan, 'everyone is entitled to his own opinion but not to his own facts' (Plante 2014), illustrating the difficulties priest perpetrators have in making complete and honest disclosures.

In a literature review in *Theological Studies*, Hogan (2011) found empirical consensus did not support the proposition that individual pathology was the cause of offending and that the answers must be found elsewhere. She nominated three core explanatory elements: (a) a mistaken theology of the body and sexuality that has framed Catholic ethics; (b) the related endemic patriarchy that cultivated a cavalier neglect of children; and (c) an ecclesiology that is flawed in its concept of authority, the nature of priestly ministry and the subservient role of lay people.

The two major explanatory models characterised by greater complexity and powerful insight were identified in our review of the literature. In chronological order, they are:

1. the 1990 German Drewermann model
2. the 1997 Australian Ranson model

## **The Drewermann psychospiritual model of the clergy ideal**

In 1990 in Germany, just after the clerical sex abuse scandal had come to public attention in the English-speaking world, the renowned dissident Catholic theologian, depth psychologist and psychoanalyst, Eugen Drewermann, published *Kleriker: Psychogramm eines Ideals* (Clergy: Psychological Profile of an Ideal), arguing that the Catholic Church's priesthood ideal was very likely to produce an infantile clergy susceptible to sexual repression and acting out, including assaulting children, inasmuch as priests are forbidden to love and to be themselves. He viewed clerical sexual abuse of children as a direct consequence of a deeply flawed psychospiritual model of the clerical ideal of the Catholic Church. His model is more a critique of clericalism, but more recently he has given extended comments about priestly paedophilia (Drewermann 2002).

Born in 1940 and ordained in 1965, Drewermann is said to be Germany's greatest living theologian, but better known as an anti-war activist, and it is beyond the scope of this study to present the breadth and depth of his theology. He of course has had his critics.<sup>19</sup> In 1996, he was silenced by the Archbishop of Paderborn with the approval of the Congregation for the Doctrine of the Faith, and forbidden to preach. His work is largely unknown in English-speaking circles, although Beier's monograph (2006) upon which we have largely relied is a fine introduction to his thinking.

Partly based on his own clinical work with priests, his psychoanalytic study focuses on the impacts of the prevailing clericalised ideal of the Church on the mental health of priests and religious brothers and sisters through the ossification of the underlying psychospiritual structure, founded on an externalised interpretation of Catholic doctrine. His task is to understand through his theological and psychological frameworks Catholic priests 'in their struggles to live with inhuman ideals'. He

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<sup>19</sup> Among his critics is the French scripture scholar, Pierre Grelot (1994) who is critical of his exegetical methodology.

describes his book as a ‘collective psychotherapy of the whole system of the Church’ but he insists that the issue is so important that it needs to be publicly debated since healthy religion is related to a healthy society. ‘The mental hygiene of the leadership of a religion especially is of immediate interest even for that part of the population which has no religious ties’ (Drewermann 1990: 32 translated and quoted by Beier 2006: 276).

### ***The sacrificial psychology of the clergy ideal***

The problem, in Drewermann’s view, lies in the structures by which the Church quarantines the way of life of its most committed followers. At the core of his analysis of the current crisis in the Catholic Church is the notion of clerical sacrifice. The sacrificial psychology of the clergy is underpinned by the psychological element of the vocational call, whereby the aspirational dream is displaced by the conscious ‘decision’ to follow Christ, and then by the replacement of the personal nature of the communicated calling through ‘an objectification of the office’ (Beier 2006).

The question of the calling to priesthood is embedded in the tension between the divine chosenness and individual human freedom. The Catholic Church insists that the cleric must have chosen the priestly or brotherly life, while God through his grace must ‘co-perform’ that decision. In this, the externalised nature of the calling implies that the unconscious is repressed and ignored. Henceforth, as a priest, his duty is to work with the grace of God through the priestly educational and pastoral structures. This, in his view, has very negative repercussions not only for the priests themselves but for the whole Catholic community (Beier 2006), by fostering not only psychic alienation and distortion, but also religious alienation through a violent God-image. In psychoanalytic terms, the repressed part of the priestly unconscious is simply transferred onto God and results in a bifurcated psychogenetic development. Of course, many priests have escaped this because they did not fully internalise the current clerical ideal type with their partial or full dissent. He describes the current black-collar ideal that has personified the Catholic clergyman for centuries as:

a permanently divided mentality through which God appears ambiguous to the highest degree. Since the problematic, frightening (*angstigenden*) contents of the unconscious especially are cut off from one’s own human ego during the defensive process of projection, all the feelings of ambivalence and contradiction which once lay unresolved in the biography of the cleric are henceforth placed upon the person of God (Drewermann 1990: 54 translated by and quoted by Beier 2006: 282)

The all-powerful God can do anything and forgive everything! Secondly, in the same psychodynamic process, the divine has to be found, in principle, outside or beyond the human, thus contradicting the axiom of St Irenaeus (130–202), Bishop of Lugdunum (Lyon) in France, that ‘The glory of God is man (and woman) fully alive’. The transmission or communication of God’s revelation has to be demonstrated as historical facts in time and space, and disallows or neglects the myth, the metaphor and the poetic.

### ***Blocks to resolution of the psychospiritual conflicts***

In Drewermann’s view, as interpreted by Beier (2006), three factors prevent an appropriate resolution of the psychospiritual conflicts of the Catholic clergy. Firstly, because of the transference of the unconscious onto God in answering the divine calling, any attempt of a post-hoc revisiting of one’s motivation to be a priest or religious brother or sister would be perceived as leading to serious doubts about one’s faith. Secondly, in the reshaping of psychic alienation into religious alienation, the resulting God-image appears as an overpowering opponent and prevents any kind of risk-taking ever again after accepting the risk of the vocational call, albeit into a comfortable personal lifestyle, and



never putting a further trust in God (Beier 2006). The priest or religious brother or sister with their high community status is psychospiritually trapped in their way of life, whatever their sins and offences may have been. And God always forgives!

Thirdly, solving these psychospiritual dilemmas is further prevented by the separation of and contradiction between God's demands and the human needs, desires and aspirations of the human person. God's will is not to be resisted, and God and God's calling is externalised, resulting in the reduction of the *persona* of the priest to his community role and his priestly or episcopal office (see Beier 2006: 283). The office becomes 'the truth of the self', and the priest becomes a mere uncritical functionary. In Jungian terms, this identification of office and person allows the *persona* to take the place of the ego. In Freudian terms, the superego becomes dominant in the psyche of the cleric (Drewermann 1990; Beier 2006). And the sacrificial mentality accepts all this, including a lack of independent, critical thinking that may diverge from the Church's theological and moral traditions.

In Drewermann's thinking, religious exceptionalism with its absolute claim to truth allows the Church to officially proclaim that it can never err even though it is an *ecclesia semper reformanda*. This leads to a 'spiritless' Church where neither the human spirit or God the Holy Spirit can truly flourish, as was observed by the second 2001 John Jay report in its observation about the lack of innovation in the Church. Nor can authentic healing take place.

### ***The hatred of authentic masculinity***

Deep within the Catholic Church's thinking of pious devotionism are buried three factors: (1) the authoritarian centralism of paternal power, (2) the restrictive severity in the regulations of sexual morality, and (3) the expansive veneration of the Virgin Mother, forever an unattainable female ideal. This results in a fundamental hatred of authentic masculinity among the male clergy. Drewermann comments and it is necessary to quote him at length:

Only thus can we explain the curious attractiveness of the Catholic Church especially to *women*. They are the ones who are most oppressed by the Catholic Church, but at the same time they are the ones who alone make it possible that daily mass is celebrated to some purpose...that on Sundays a sermon can be delivered before somewhat filled pews. In the midst of the patriarchal structures of the Catholic Church one has to recognise the *latent hatred of masculinity* as the real core of the oppression of women: the men who want to rule here do not want to be men, and it is precisely their latent homosexual aura which makes them seem to many women in a certain sense better, more cultivated, more sensitive and considerate "men". They are mothers who themselves were barely allowed to be women and who perceive in priests with their nice mamma's boy and perfect-boy behaviours their true dream children or who discover in them something of the father whom they would have wanted (Drewermann 1990: 589 translated by and quoted by Beier 2006: 317 – 318).

As a child of the Second World War, Drewermann has been obsessed and haunted by the German clergy's general acceptance of Nazism which required absolute, unconditional obedience to the Fuhrer, as well as the acceptance of the German people (Beier 2006). As a response, his integration of theology and depth psychology is an attempt to overcome the soullessness of today's theology, and the theoretical atheism of today's psychology.

### ***Explaining clerical sexual abuse of children***

Clearly Drewermann is not surprised by the clerical sex abuse scandal which he would interpret in terms of the sacrificial nature of the divine calling, the repression of the unconscious, the over-

identification of the persona with the office and the factors preventing a resolution of the psychospiritual conflicts embedded in the psyche of clericalism. This results in the bishops not knowing what to do. It also means that ‘ideal priests’ have a particular vulnerability to child sexual abuse.

In Beier’s interpretation of his thought, the young seminarian is expected to sacrifice all heterosexual contacts with young women in the celibate cause. ‘Often, according to Drewermann, this leads to a compensatory form of homosexuality which the parents and the Church naively disavow as impossible in the first place’ (Beier 2006: 278). The loneliness of the young seminarian and young priest and the absence of the feminine mutates into an initial friendship with a young boy, although this first friendship does not break into the ‘taboo zones of genital sexuality’, but allows him to break away from his mother. The homosexual form of child sexual abuse in priests usually results from fixation on the earlier pubertal experience of first love:

Even at a later date in the life of homosexual priests there is a preference in love relations with boys or youths whose age corresponds to the age in which they (the priests) had their first ‘experiences’ of love.....since marrying a woman is excluded as a possibility anyway but the fear of a breakthrough of homosexual acts and of relationships still persists, the sexually repressive attitude of the Roman Catholic Church promises something like a redemption from the whole dilemma. Reality, of course, looks quite different. Theological seminaries are filled with scores of people who have the same experience and who attract each other according to rules which are no less mysterious than the hidden signals of heterosexual lovers. In other words, anyone who thought he would be out of the woods has to realize, to the contrary, that, in reality, he has jumped from the frying pan into the fire’ (Drewermann 1990: 598 translated by and quoted by Beier 2006: 278 - 279).

In Drewermann’s view, the Catholic Church needs ‘a collective therapy’ and it is an immense task. On his 65th birthday, he resigned from membership of the Church.

## **The Australian contribution – Ranson’s model**

Although it does not appear to have had much impact on Australian episcopal policy and praxis, the major Australian contribution came early in 1997 with the model of the former Cistercian monk, now diocesan priest in the NSW diocese of Broken Bay, theologian David Ranson. He has produced one of the best models to explain the sexual abuse phenomenon, which he presented to Australia’s Catholic Social Welfare Commission at that time. It had an impact upon the work of Faulkner (1998) in his review for the Christian Brothers, and on the work of Keenan (2012) as a result of her study sojourn in Sydney. Ranson’s elegantly constructed model takes a more theological approach than the other models, eschewing simple causal factors. He suggests that the sexual abuse emerged from a dysfunctional ecclesiastical milieu that resulted from the interweaving of three matrices (theological, pastoral and social) and their dysfunctional elements, all of which must be addressed simultaneously (Ranson 1997).

### ***Patriarchal imagery of God***

Within the first and theological matrix, the dysfunctional elements are: (i) the patriarchal imagery of God, and (ii) the Church’s ambiguous tradition of sexuality. Ranson suggests that much of the Church’s recent patriarchal language about God originated in the third century with a central notion of Lactantius (c. 250 – c. 325), advisor to the first Christian emperor, Constantine I, and regarded as the

Christian Cicero. Lactantius's image of God was over-influenced by the notion of the father or *paterfamilias* of the Roman household, whose authority is regarded as lordship, and power as control. This was at variance with Jesus's notion of 'father', or '*abba*', which was suffused with intimacy and with authentic Trinitarian understandings. The Church's God-imagery ought to be formulated with different emphases on community, collaboration, participation and empowerment. Instead, no matter how benevolently ministry is exercised, domination and subservience are subliminally embedded in the Church's structures and 'the horizon of abuse is established' (Ranson 1997).

Ranson suggests the patriarchal imagery of God had another repercussion in regard to 'failure' and 'accountability' because it legitimated, in the cause of religious superiority, a public perfectionist tendency in which vulnerability is disavowed and systemic failure hidden:

Such imagery is unable to encourage 'process' and tends towards a confusion of idea and facts. It cannot invite persons to share their struggle toward maturation. Rather it will favour a compartmentalisation of a person's interior struggle and their public persona. Likewise, operating from such inadequate theological imagery, the ecclesial institution will not only work to distance itself from an individual's failures, particularly of a sexual nature, but also deliberately hide such vulnerability in favour of maintaining the public collective persona of 'perfectibility' and 'invulnerability' (Ranson 1997: 5).

### ***The Church's ambiguous theology of sexuality***

In regard to the Church's notion of sexuality, Ranson suggests that the Hellenistic influence on Christianity resulted in sexuality being associated with the notion of perfection which, in turn, was associated with concepts of passionlessness (*apatheia*) and asexuality. Since then, the dominant Church discourse in its moral theology has been a divorce between 'matter' and 'spirit' and the exaltation of virginity. Its most recent expression has been in French-derived Jansenism that has resided at the core of Anglo-Irish spirituality. 'Inadequate theologies of sexuality become institutionalised in celibate cultures which hitherto have been idealised as the perfection of sanctity. In these cultures, sexuality is something 'dark', 'secretive' and 'troublesome'. It becomes split from the individual's primary goals and possibly assumes a life of its own' (Ranson 1997: 6).

The second matrix is the psychological, where the dysfunctional elements are (a) the failure to deconstruct the religious experience/vocational impulse, (b) the denial of eros, and (c) the denial of the feminine. In Ranson's view, religious experience, as an ambiguous reality, contains the ability to sublimate an unresolved tension between the emotional needs of dominance and abasement. The person internalises the awesome majesty of God, but its cost may be a certain servitude. This religious sublimation may be an accessible intrapsychic defence against strong feelings of insecurity and anxiety associated with inadequacy and guilt. Spiritualisation provides one safety exit point whereas sexualisation is a much less respectable safety exit. And the sublimation may also rigidify into increasingly defensive personality patterns seen in traditional Catholic restorationism. He adds:

It also runs the risk of being substituted by sexualisation when the 'religious' adaptation of the tension is no longer experienced in satisfactory ways. It is the unresolved tension at the heart of situations of abuse (Ranson 1997: 6).

Eros as the source of desire, passion, imagination, dreaming and prophecy is the life impulse, connecting people and affirming creation in the engagement with the sensate. In the Church's sexual morality, eros has very often been denied or treated fearfully. 'Celibacy in many, many cases has been regarded almost as the vanquisher of eros. But the failure to cultivate eros in life denudes caritas of its

natural warmth and spontaneity, it robs agape of its specificity' (Ranson 1997: 6). Without a mature affirmation of eros, the life of desire becomes distorted and, at worst, perverted.

The denial of eros is closely associated with the denial of the feminine. On this point, Ranson says:

Exclusion of the feminine, particularly in celibate culture, augurs an hermetically sealed culture in which there is an overdeveloped masculine ethos. Masculine energy is centrifugal; it is competitive in calibre and is inherently compartmentalising. In cultures built on a masculine energy which is not balanced by the feminine, there is a growing incapacity for genuine interior reflection, the inability to relate with intimacy, a dependence on role and work for self-identification, the loss of a humanising tenderness (often illustrated in architecture and design of living space). Men grow in a forgetfulness of how to relate to peers (men and women) in healthy, adult and truly generative ways. Clericalism is a particular expression of such a culture. Needs for intimacy cannot be quashed, however. They simply seek their expression in covert and distorted ways and are often sexualised (Ranson 1997: 7).

Within the third intersecting matrix of the social and the institutional, the dysfunctional elements relate to (i) the formation of the celibate or virginal person, (ii) a dysfunctional community life and (iii) professional accountability. Ranson is convinced that sexual dysfunction among priests and religious has resulted from poor formation in celibate sexuality. He reiterates in strong terms that while in theory the Catholic Church ordains only those men to the priestly ministry who have first discerned the gift of celibacy, in practice in the distant and recent past men have chosen priestly ministry with celibacy as 'part of the package', and as an ambiguous component at that. This results in the strong possibility that the individual's sexuality will be split from the person's other motivations and perhaps develop a distortive autonomy of its own.

Ranson (1997) is also critical of religious order communities. He regards them as largely dysfunctional, having become 'conflictual forums' where emotional illiteracy abounds and effective communication is severely limited. He has developed the most comprehensive model to explain clerical sexual abuse of children, very focused on the multiple layers of dysfunctionality within Catholic religious culture.

## APPENDIX THREE

# COGNITIVE DISTORTIONS, DENIAL MECHANISMS AND TECHNIQUES OF NEUTRALIZATION

The various studies also indicate that the cognitive styles of the offenders were much more distorted than those of non-offending priests and brothers, and these distortions were multilayered. As well, their mechanisms of denial and their techniques of neutralizing and ensuring the silence of the child victims had a religious overlay.

However, another layer of cognitive distortions was found that was driven by psycho-spiritual and theological factors and the offender's wilful suspension of their publicly espoused moral standards. However, several studies of clerical offenders have drawn attention to additional cognitive distortions and neutralising techniques that have a unique theological and pastoral overlay. Priest abusers generally have significantly higher levels of education and higher IQs than sexual abusers of children generally (John Jay Report 2004, 2011, Winship. Straker & Robinson 2011). Ryan, Baerwald and McGlone (2008) found sexually abusive clergy had significantly higher distorted thinking styles than other Catholic clergy. In the UK, Saradjian and Nobus (2003) studied cognitive distortions based on the self-report statements of a small sample of 14 clergymen, 11 of whom were Catholic priests, who had been residents at an assessment and treatment centre for child molesters. They found that the priests held many similar cognitive distortions to other types of child offenders such as 'having sex with children is a good way for adults to teach them about sex', 'only fondling their genitals is not really having sex with children so no harm is done' and 'relationships with children are enhanced by having sex with them'.

But the taxonomies were also quite different insofar as the priests used many religion-related distortions to facilitate their sexual offending. Amongst the pre-offence cognitions to justify and rationalise the possibility of sexual acts against children were:

- 'I need sexual gratification.'
- 'I can go to a priest and confess my sins and promise not to do it again.'
- 'Touching is not sex.'
- 'When God called me, he knew what I was like, what my needs were.'
- 'How could it be that bad if God allows it?'
- 'I have a right to love and affection because I spend my life doing good for others'.

Interestingly at the peri-offence stage, there was no reference to religious considerations at all, 'it is not really abuse, no actual penetration and no violence. They are not harmed or affected'. It would appear that right at the offending stage the priests suspended their usual moral and personal standards. At the post-offence stage, it was partly attributing blame and responsibility to God, ('I believed that as God forgave me my sins, he would one day perform a miracle and change me: this "responsibility" was his, and he had called me and accepted me how I am'), the distortion that God would allow no harm to come to the victim ('God will look after this particular child and see that it comes to no harm; it will have its special protection') or that God understands ('God allows the good and the bad; he allows the offending because of all the good I do'). It was thus found that religious beliefs played an instrumental role in facilitating their offending (Saradjian & Nobus 2003), principally from their theological and pastoral formation.

### *Denial of Responsibility and Techniques of Neutralisation*

Akin to cognitive distortions are the techniques of neutralisation used to justify illegal behaviour and the denial of responsibility. Regarding the denial of responsibility, the two best studies found that priests blamed their offending behaviour on such things as alcoholism, mental health problems, their parents and their sexual orientation. Blaming their alcoholism was particularly prominent, leading to a reduction in self-control and then poor decision-making. Others blamed their need for intimacy and companionship as well as emotional deficits. One blamed child pornography websites which 'he bumped into (but) wasn't looking for'. Only eight priests blamed their condemners, usually the diocese for the way they had handled the allegations. Their claims were of unfair treatment, breach of confidentiality, the violation of their canonical and civil rights including the Church's statute of limitations, and kowtowing to the public

A Milwaukee case study and other studies have highlighted that denial more likely leads to persistence in offending. Overall the distortions, denials and neutralisations clearly indicated that the priests' lack of understanding of children's cognitive, emotional and sexual development, the trivialisation of the penitential and confessional process, the power of the priesthood to access and groom, the bargaining with an all-seeing God, a narcissistic self-absorption and the consequences of lack of intimacy and sexual deprivation.

### *The Mechanisms of Denial*

Denial is a process where persons are engaged in protecting their self-esteem and coping with the dissonance between their self-image and their behaviour. One study divides sexual abusers into four groups as rationalisers who try to justify their offences, externalisers who blame the victim or others, internalisers who most blame their abnormal mental state and the absolute deniers who deny any offence took place.

In their study of denial in twelve Australian abusing priests and brothers, Winship, Straker and Robinson (2011) found three themes emerged: (1) denial of impact or minimization ('it happened but it didn't hurt them'); (2) denial of personal saliency or depersonalisation of the child victim ('I abused them but it doesn't mean I am a child abuser'); and (3) denial of meaning whether as disbelievers ('I touched them sexually but I don't believe it was sexual') and disallowers who refused to consider it as sexual because of their commitment to consecrated celibacy. Some were in denial because of the implication that they would be classified as homosexual which they saw as aberrant, perverse and sinful (Winship, Straker & Robinson 2011).

In concluding this section, the Queensland Forde Report (2007) gives a very illustrative example of the underlying theological issues from the perspective of a young victim:

'Father told me it wasn't a sin as I was one of God's chosen children and that God made boys to be special so that those who did God's work were not led into the temptation of sinning with women. I was told by him that I was to say nothing to anyone because God would be very angry with me for revealing his secret ways'.



## APPENDIX FOUR

Royal Commission into Institutional Responses to Child Sexual Abuse

# FINAL REPORT

## Volume 16, Religious institutions Recommendations

### Recommendations to the Anglican Church

#### **Recommendation 16.1**

The Anglican Church of Australia should adopt a uniform episcopal standards framework that ensures that bishops and former bishops are accountable to an appropriate authority or body in relation to their response to complaints of child sexual abuse.

#### **Recommendation 16.2**

The Anglican Church of Australia should adopt a policy relating to the management of actual or perceived conflicts of interest that may arise in relation to allegations of child sexual abuse, which expressly covers:

- a. members of professional standards bodies
- b. members of diocesan councils (otherwise known as bishop-in-council or standing committee of synod)
- c. members of the Standing Committee of the General Synod
- d. chancellors and legal advisers for dioceses.

#### **Recommendation 16.3**

The Anglican Church of Australia should amend *Being together* and any other statement of expectations or code of conduct for lay members of the Anglican Church to expressly refer to the importance of child safety.

#### **Recommendation 16.4**

The Anglican Church of Australia should develop a national approach to the selection, screening and training of candidates for ordination in the Anglican Church.

#### **Recommendation 16.5**

The Anglican Church of Australia should develop and each diocese should implement mandatory national standards to ensure that all people in religious or pastoral ministry (bishops, clergy, religious and lay personnel):

- a. undertake mandatory, regular professional development, compulsory components being professional responsibility and boundaries, ethics in ministry and child safety
- b. undertake mandatory professional/pastoral supervision
- c. undergo regular performance appraisals

### Recommendations to the Catholic Church

#### **Recommendation 16.6**

The bishop of each Catholic Church diocese in Australia should ensure that parish priests are not the employers of principals and teachers in Catholic schools.

#### **Recommendation 16.7**

The Australian Catholic Bishops Conference should conduct a national review of the governance and management structures of dioceses and parishes, including in relation to issues of transparency, accountability, consultation and the participation of lay men and women. This review should draw from the approaches to governance of Catholic health, community services and education agencies.

**Recommendation 16.8**

In the interests of child safety and improved institutional responses to child sexual abuse, the Australian Catholic Bishops Conference should request the Holy See to:

- a. publish criteria for the selection of bishops, including relating to the promotion of child safety
- b. establish a transparent process for appointing bishops which includes the direct participation of lay people.

**Recommendation 16.9**

The Australian Catholic Bishops Conference should request the Holy See to amend the 1983 Code of Canon Law to create a new canon or series of canons specifically relating to child sexual abuse, as follows:

- a. All delicts relating to child sexual abuse should be articulated as canonical crimes against the child, not as moral failings or as breaches of the ‘special obligation’ of clerics and religious to observe celibacy.
- b. All delicts relating to child sexual abuse should apply to any person holding a ‘dignity, office or responsibility in the Church’ regardless of whether they are ordained or not ordained.
- c. In relation to the acquisition, possession, or distribution of pornographic images, the delict (currently contained in Article 6 §2 1° of the revised 2010 norms attached to the motu proprio *Sacramentorum sanctitatis tutela*) should be amended to refer to minors under the age of 18, not minors under the age of 14.

**Recommendation 16.10**

The Australian Catholic Bishops Conference should request the Holy See to amend canon law so that the pontifical secret does not apply to any aspect of allegations or canonical disciplinary processes relating to child sexual abuse.

**Recommendation 16.11**

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to ensure that the ‘pastoral approach’ is not an essential precondition to the commencement of canonical action relating to child sexual abuse.

**Recommendation 16.12**

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the time limit (prescription) for commencement of canonical actions relating to child sexual abuse. This amendment should apply retrospectively.

**Recommendation 16.13**

The Australian Catholic Bishops Conference should request the Holy See to amend the ‘imputability’ test in canon law so that a diagnosis of paedophilia is not relevant to the prosecution of or penalty for a canonical offence relating to child sexual abuse.

**Recommendation 16.14**

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to give effect to Recommendations 16.55 and 16.56.

**Recommendation 16.15**

The Australian Catholic Bishops Conference and Catholic Religious Australia, in consultation with the Holy See, should consider establishing an Australian tribunal for trying canonical disciplinary cases against clergy, whose decisions could be appealed to the Apostolic Signatura in the usual way.

**Recommendation 16.16**

The Australian Catholic Bishops Conference should request the Holy See to introduce measures to ensure that Vatican Congregations and canonical appeal courts always publish decisions in disciplinary matters relating to child sexual abuse, and provide written reasons for their decisions. Publication should occur in a timely manner. In some cases it may be appropriate to suppress information that might lead to the identification of a victim.

**Recommendation 16.17**

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the requirement to destroy documents relating to canonical criminal cases in matters of morals, where the accused cleric has died or ten years have elapsed from the condemnatory sentence. In order to allow for delayed disclosure of abuse by victims and to take account of the limitation periods for civil actions for child sexual abuse, the minimum requirement for retention of records in the secret archives should be at least 45 years.

**Recommendation 16.18**

The Australian Catholic Bishops Conference should request the Holy See to consider introducing voluntary celibacy for diocesan clergy.

**Recommendation 16.19**

All Catholic religious institutes in Australia, in consultation with their international leadership and the Holy See as required, should implement measures to address the risks of harm to children and the potential psychological and sexual dysfunction associated with a celibate rule of religious life. This should include consideration of whether and how existing models of religious life could be modified to facilitate alternative forms of association, shorter terms of celibate commitment, and/or voluntary celibacy (where that is consistent with the form of association that has been chosen).

**Recommendation 16.20**

In order to promote healthy lives for those who choose to be celibate, the Australian Catholic Bishops Conference and all Catholic religious institutes in Australia should further develop, regularly evaluate and continually improve, their processes for selecting, screening and training of candidates for the clergy and religious life, and their processes of ongoing formation, support and supervision of clergy and religious.

**Recommendation 16.21**

The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a national protocol for screening candidates before and during seminary or religious formation, as well as before ordination or the profession of religious vows.

**Recommendation 16.22**

The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a mechanism to ensure that diocesan bishops and religious superiors draw upon broad-ranging professional advice in their decision-making, including from staff from seminaries or houses of formation, psychologists, senior clergy and religious, and lay people, in relation to the admission of individuals to: a. seminaries and houses of religious formation b. ordination and/or profession of vows.

**Recommendation 16.23**

In relation to guideline documents for the formation of priests and religious:

- a. The Australian Catholic Bishops Conference should review and revise the *Ratio nationalis institutionis sacerdotalis: Programme for priestly formation* (current version December 2015), and all other guideline documents relating to the formation of priests, permanent deacons, and those in pastoral ministry, to explicitly address the issue of child sexual abuse by clergy and best practice in relation to its prevention.
- b. All Catholic religious institutes in Australia should review and revise their particular norms and guideline documents relating to the formation of priests, religious brothers, and religious sisters, to explicitly address the issue of child sexual abuse and best practice in relation to its prevention.

**Recommendation 16.24**

The Australian Catholic Bishops Conference and Catholic Religious Australia should conduct a national review of current models of initial formation to ensure that they promote pastoral effectiveness, (including in relation to child safety and pastoral responses to victims and survivors) and protect against the development of clericalist attitudes.

**Recommendation 16.25**

The Australian Catholic Bishops Conference and Catholic Religious Australia should develop and each diocese and religious institute should implement mandatory national standards to ensure that all people in religious or pastoral ministry (bishops, provincials, clergy, religious, and lay personnel):

- a. undertake mandatory, regular professional development, compulsory components being professional responsibility and boundaries, ethics in ministry, and child safety
- b. undertake mandatory professional/pastoral supervision
- c. undergo regular performance appraisals.

**Recommendation 16.26**

The Australian Catholic Bishops Conference should consult with the Holy See, and make public any advice received, in order to clarify whether:

- a. information received from a child during the sacrament of reconciliation that they have been sexually abused is covered by the seal of confession
- b. if a person confesses during the sacrament of reconciliation to perpetrating child sexual abuse, absolution can and should be withheld until they report themselves to civil authorities.

## Recommendations to the Jehovah's Witness organisation

**Recommendation 16.27**

The Jehovah's Witness organisation should abandon its application of the two-witness rule in cases involving complaints of child sexual abuse.

**Recommendation 16.28**

The Jehovah's Witness organisation should revise its policies so that women are involved in processes related to investigating and determining allegations of child sexual abuse.

**Recommendation 16.29**

The Jehovah's Witness organisation should no longer require its members to shun those who disassociate from the organisation in cases where the reason for disassociation is related to a person being a victim of child sexual abuse.

## Recommendations to Jewish institutions

### **Recommendation 16.30**

All Jewish institutions in Australia should ensure that their complaint handling policies explicitly state that the *halachic* concepts of *mesirah*, *moser* and *loshon horo* do not apply to the communication and reporting of allegations of child sexual abuse to police and other civil authorities.

## Recommendations to all religious institutions in Australia

### **Recommendation 16.31**

All institutions that provide activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children, should implement the 10 Child Safe Standards identified by the Royal Commission.

### **Recommendation 16.32**

Religious organisations should adopt the Royal Commission's 10 Child Safe Standards as nationally mandated standards for each of their affiliated institutions.

### **Recommendation 16.33**

Religious organisations should drive a consistent approach to the implementation of the Royal Commission's 10 Child Safe Standards in each of their affiliated institutions.

### **Recommendation 16.34**

Religious organisations should work closely with relevant state and territory oversight bodies to support the implementation of and compliance with the Royal Commission's 10 Child Safe Standards in each of their affiliated institutions.

### **Recommendation 16.35**

Religious institutions in highly regulated sectors, such as schools and out-of-home care service providers, should report their compliance with the Royal Commission's 10 Child Safe Standards, as monitored by the relevant sector regulator, to the religious organisation to which they are affiliated.

### **Recommendation 16.36**

Consistent with Child Safe Standard 1, each religious institution in Australia should ensure that its religious leaders are provided with leadership training both pre- and post-appointment, including in relation to the promotion of child safety.

### **Recommendation 16.37**

Consistent with Child Safe Standard 1, leaders of religious institutions should ensure that there are mechanisms through which they receive advice from individuals with relevant professional expertise on all matters relating to child sexual abuse and child safety. This should include in relation to prevention, policies and procedures and complaint handling. These mechanisms should facilitate advice from people with a variety of professional backgrounds and include lay men and women.

### **Recommendation 16.38**

Consistent with Child Safe Standard 1, each religious institution should ensure that religious leaders are accountable to an appropriate authority or body, such as a board of management or council, for the decisions they make with respect to child safety.

### **Recommendation 16.39**

Consistent with Child Safe Standard 1, each religious institution should have a policy relating to the management of actual or perceived conflicts of interest that may arise in relation to allegations of child sexual abuse. The policy should cover all individuals who have a role in

responding to complaints of child sexual abuse.

**Recommendation 16.40**

Consistent with Child Safe Standard 2, wherever a religious institution has children in its care, those children should be provided with age-appropriate prevention education that aims to increase their knowledge of child sexual abuse and build practical skills to assist in strengthening self-protective skills and strategies. Prevention education in religious institutions should specifically address the power and status of people in religious ministry and educate children that no one has a right to invade their privacy and make them feel unsafe.

**Recommendation 16.41**

Consistent with Child Safe Standard 3, each religious institution should make provision for family and community involvement by publishing all policies relevant to child safety on its website, providing opportunities for comment on its approach to child safety, and seeking periodic feedback about the effectiveness of its approach to child safety.

**Recommendation 16.42**

Consistent with Child Safe Standard 5, each religious institution should require that candidates for religious ministry undergo external psychological testing, including psychosexual assessment, for the purposes of determining their suitability to be a person in religious ministry and to undertake work involving children.

**Recommendation 16.43**

Each religious institution should ensure that candidates for religious ministry undertake minimum training on child safety and related matters, including training that:

- a. equips candidates with an understanding of the Royal Commission's 10 Child Safe Standards
- b. educates candidates on:
  - i. professional responsibility and boundaries, ethics in ministry and child safety
  - ii. policies regarding appropriate responses to allegations or complaints of child sexual abuse, and how to implement these policies
  - iii. how to work with children, including childhood development
  - iv. identifying and understanding the nature, indicators and impacts of child sexual abuse.

**Recommendation 16.44**

Consistent with Child Safe Standard 5, each religious institution should ensure that all people in religious or pastoral ministry, including religious leaders, are subject to effective management and oversight and undertake annual performance appraisals.

**Recommendation 16.45**

Consistent with Child Safe Standard 5, each religious institution should ensure that all people in religious or pastoral ministry, including religious leaders, have professional supervision with a trained professional or pastoral supervisor who has a degree of independence from the institution within which the person is in ministry.

**Recommendation 16.46**

Religious institutions which receive people from overseas to work in religious or pastoral ministry, or otherwise within their institution, should have targeted programs for the screening, initial training and professional supervision and development of those people. These programs should include material covering professional responsibility and boundaries, ethics in ministry and child safety.

**Recommendation 16.47**



Consistent with Child Safe Standard 7, each religious institution should require that all people in religious or pastoral ministry, including religious leaders, undertake regular training on the institution's child safe policies and procedures. They should also be provided with opportunities for external training on best practice approaches to child safety.

**Recommendation 16.48**

Religious institutions which have a rite of religious confession for children should implement a policy that requires the rite only be conducted in an open space within the clear line of sight of another adult. The policy should specify that, if another adult is not available, the rite of religious confession for the child should not be performed.

**Recommendation 16.49**

Codes of conduct in religious institutions should explicitly and equally apply to people in religious ministry and to lay people.

**Recommendation 16.50**

Consistent with Child Safe Standard 7, each religious institution should require all people in religious ministry, leaders, members of boards, councils and other governing bodies, employees, relevant contractors and volunteers to undergo initial and periodic training on its code of conduct. This training should include:

- a. what kinds of allegations or complaints relating to child sexual abuse should be reported and to whom
- b. identifying inappropriate behaviour which may be a precursor to abuse, including grooming
- c. recognising physical and behavioural indicators of child sexual abuse
- d. that all complaints relating to child sexual abuse must be taken seriously, regardless of the perceived severity of the behaviour.

**Recommendation 16.51**

All religious institutions' complaint handling policies should require that, upon receiving a complaint of child sexual abuse, an initial risk assessment is conducted to identify and minimise any risks to children.

**Recommendation 16.52**

All religious institutions' complaint handling policies should require that, if a complaint of child sexual abuse against a person in religious ministry is plausible, and there is a risk that person may come into contact with children in the course of their ministry, the person be stood down

from ministry while the complaint is investigated.

**Recommendation 16.53**

The standard of proof that a religious institution should apply when deciding whether a complaint of child sexual abuse has been substantiated is the balance of probabilities, having regard to the principles in *Briginshaw v Briginshaw*.

**Recommendation 16.54**

Religious institutions should apply the same standards for investigating complaints of child sexual abuse whether or not the subject of the complaint is a person in religious ministry.

**Recommendation 16.55**

Any person in religious ministry who is the subject of a complaint of child sexual abuse which is substantiated on the balance of probabilities, having regard to the principles in *Briginshaw v Briginshaw*, or who is convicted of an offence relating to child sexual abuse, should be permanently removed from ministry. Religious institutions should also take all

necessary steps to effectively prohibit the person from in any way holding himself or herself out as being a person with religious authority.

**Recommendation 16.56**

Any person in religious ministry who is convicted of an offence relating to child sexual abuse should:

- a. in the case of Catholic priests and religious, be dismissed from the priesthood and/or dispensed from his or her vows as a religious
- b. in the case of Anglican clergy, be deposed from holy orders
- c. in the case of Uniting Church ministers, have his or her recognition as a minister withdrawn
- d. in the case of an ordained person in any other religious denomination that has a concept of ordination, holy orders and/or vows, be dismissed, deposed or otherwise effectively have their religious status removed.

**Recommendation 16.57**

Where a religious institution becomes aware that any person attending any of its religious services or activities is the subject of a substantiated complaint of child sexual abuse, or has been convicted of an offence relating to child sexual abuse, the religious institution should:

- a. assess the level of risk posed to children by that perpetrator's ongoing involvement in the religious community
- b. take appropriate steps to manage that risk.

**Recommendation 16.58**

Each religious organisation should consider establishing a national register which records limited but sufficient information to assist affiliated institutions identify and respond to any risks to children that may be posed by people in religious or pastoral ministry.

## Volume 17, *Beyond the Royal Commission* Recommendations

### Monitoring and reporting on implementation

An initial government response

**Recommendation 17.1**

The Australian Government and state and territory governments should each issue a formal response to this Final Report within six months of it being tabled, indicating whether our recommendations are accepted, accepted in principle, rejected or subject to further consideration.

Ongoing periodic reporting

**Recommendation 17.2**

The Australian Government and state and territory governments should, beginning 12 months after this Final Report is tabled, report on their implementation of the Royal Commission's recommendations made in this Final Report and its earlier *Working With Children Checks, Redress and civil litigation* and *Criminal justice* reports, through five consecutive annual reports tabled before their respective parliaments.

**Recommendation 17.3**

Major institutions and peak bodies of institutions that engage in child-related work should,

beginning 12 months after this Final Report is tabled, report on their implementation of the Royal Commission's recommendations to the National Office for Child Safety through five consecutive annual reports. The National Office for Child Safety should make these reports publicly available. At a minimum, the institutions reporting should include those that were the subject of the Royal Commission's institutional review hearings held from 5 December 2016 to 10 March 2017.

## 10-year review

### **Recommendation 17.4**

The Australian Government should initiate a review to be conducted 10 years after the tabling of this Final Report. This review should:

- a. establish the extent to which the Royal Commission's recommendations have been implemented 10 years after the tabling of the Final Report
- b. examine the extent to which the measures taken in response to the Royal Commission have been effective in preventing child sexual abuse, improving the responses of institutions to child sexual abuse and ensuring that victims and survivors of child sexual abuse obtain justice, treatment and support
- c. advise on what further steps should be taken by governments and institutions to ensure continuing improvement in policy and service delivery in relation to child sexual abuse in institutional contexts.

## Preserving the records of the Royal Commission

### **Recommendation 17.5**

The Australian Government should host and maintain the Royal Commission website for the duration of the national redress scheme for victims and survivors of institutional child sexual abuse.

## A national memorial to victims and survivors of child sexual abuse in institutional contexts

### **Recommendation 17.6**

A national memorial should be commissioned by the Australian Government for victims and survivors of child sexual abuse in institutional contexts. Victims and survivors should be consulted on the memorial design and it should be located in Canberra

## APPENDIX FIVE

# THE SEAL OF CONFESSION: ITS HISTORY AND INTERFACE WITH CIVIL AND CRIMINAL LAW

### Introduction

During the twentieth century, the issue of the confessional seal received some scholarly attention in the first three decades though none of its referred to children's confession, particularly given that Pope Pius X had lowered in the Instruction *Quam Singulari* the age of first communion and thus of first confession from 12 – 14 in the immediate pre-puberty growth phase to seven years as the 'age of reason' and insisted that it be made before first communion which has been consistent Vatican policy for many, many centuries. In 1927, the English translation of *A History of the Seal of Confession* by the German Franciscan Bertrand Kurtscheid (1877 – 1941) appeared as an updated version of the German original which had first appeared in 1910. He refers to earlier work on the precise topic of the confessional seal in 1708 by Lenglet du Fresnoy, in 1910 by Fritz Sauter and in 1911 by E. Schwartz. He dismisses all three as inadequate. In particular, Kurtscheid (1927) criticises as historically inaccurate Sauter's contention that confessional secrecy is not an official obligation of the confessor since this would bind anyone who came to know, often accidentally, to what has been confessed to the secrecy provisions.

Kurtscheid's monograph has been described as a masterpiece by Thompson (2011), a New Zealand scholar who has examined very thoroughly the interface between the religious confession privilege and the common law in English-speaking countries. He seems not to have had access to English language sources as he does not reference Nolan's entry in the 1912 Catholic Encyclopedia – it is probably emblematic of the 20<sup>th</sup> century neglect of the topic that there is no entry in the 2003 New Catholic Encyclopedia. He does reference the Mormon scholar, Charles Lea's *A History of Auricular Confession and Indulgences in the Latin Church Vol.I* (1896) but not O'Donnell's *Seal of Confession* (1911) published in Ireland nor Watkins' *A History of Penance* (1920) published in London. In the various sources of the history of the sacrament of penance (or reconciliation as it became known after the Second Vatican Council), reference is made to the seal but only in passing as it is always assumed that the seal is inviolate and absolute.

The canonists did not add much in the second half of the twentieth century as seen from a search of *Canon Law Abstracts* from 1973 – 2016. However, since the turn of the millennium, interest has increased. Smith (2001) suggests that if a long conversation ends with a sacramental confession, then the whole confession is privileged under the seal. Earlier, Moriarty (1998) had discussed a case in Oregon where a confession had been taped in a prison cell on the orders of the district attorney. The bishop requested the destruction of the tape which was achieved when the taping was found to be unconstitutional. The age of first confession was raised as a serious pastoral issue. Cardinal Julius Döpfner of Munich had allowed first communion to be made before first confession but Rome in consistency with its centuries-long policy and through Cardinal Ratzinger as head of the Congregation for the Doctrine of the Faith had stepped in to forbid it. Several years previously in 1973, seemingly in response to a similar request from the American bishops, a Vatican declaration had decided in favour of first confession before first communion on three grounds:

1. The rights of the child as a human being to privacy of conscience and his or her right as a Christian to participate in the Sacrament of Penance
2. The spiritual benefits accruing to young Christians as yet incapable of serious sin
3. The linking of Penance with the Eucharist from the very beginning, lest the Eucharist be approached lightly

Any discussion in the academic literature has emphasised the inviolability of the seal. In Australasia, Daly (2013) emphasised this, citing the case of Francis Douglas, a New Zealand Columban priest, who was executed by the Japanese after visiting some guerrilla fighters who wanted his spiritual services as the Japanese wanted to know the contents of his conversations. Douglas is seen as a martyr for the confessional seal. The magisterially authoritative 1993 Catechism of the Catholic Church is quite clear that “the Church declares that every priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents’ lives. This secret which admits of no exceptions is called ‘the sacramental seal’, because what the penitent has made known to the priest remains ‘sealed’ by the sacrament” (Catechism of the Catholic Church 1993: par. 1467) In par. 2490, quoting Canon 983 #1. The sacramental seal is inviolable; therefore it is a crime for a confessor in any way to betray a penitent by word or in any other manner or for any reason”.

### **The Seal of Confession in Patristic Times**

The following account is based very largely on Kurtscheid’s forensic analysis of the sources. Thomas Aquinas defined the seal of confession or the *sigillum confessionis* very simply as the obligation to keep secret whatever has been revealed in confession. Kurtscheid (1927) suggests that the seal flows from the very nature of confession and is based on the divine law even though it does not flow from Jesus’ actual sayings. It is not intrinsic to the sacrament because in the early Church the public confession of sins was the norm where secrecy was not the norm. It is clear from Mt 13, 31 that Christ expressly conferred on his Church the power to forgive sin in his name though the development of the details was left to the Church. “She (the Church) therefore has the right to fix the formalities and conditions for the exercise of this power. This fact explains the various changes which Penance underwent in the course of time. The Church simply accommodated herself to the times and to the views of the people without altering any essential part of the Sacrament” (Kurtscheid 1927: 2 – 3). Writing well before Vatican II times, he goes on, “Christ gave no express command regarding the seal; at least none that has come down to us. Moreover, the seal necessarily presupposes a secret confession which Christ has nowhere proscribed as the sole admissible form” (Kurtscheid 1927: 3). This gives great power to the Church in respect of the conditions surrounding the administration of the sacrament.

The very early history of the seal is entwined in the two questions whether and to what extent secret sins were a matter of a public confession and whether they were subject to public penance. The biblical sources, in Kurtscheid’s view, are not able to tell us whether confession should be public or private. The *Didache* (80 – 100) and the *Epistle of Barnabas* towards the end of the first century as well as the letter of Pope Clement I (88 – 99) to the troubled Corinthian community and the *Shepherd of Hermas* wrote clearly of the obligation to publicly confess one’s sins. Public confession was the norm in the early Church. In the third century Origen used the analogy that sins concealed in the heart are like undigested food which causes distress until it is vomited up. The central and controversial issue was whether certain serious sins, though committed in secret, were subject to public penance and thus to public knowledge. Irenaeus answered in the affirmative (*Adv. Haereses* 1, 6, 3). Tertullian, Cyprian and

Ambrose were of the same view. Pacian thought only murder, idolatry and adultery were to be subject to public penance.

The pastoral leaders of the Eastern Church including St Basil in his *Letter to Amphilochius* and Gregory of Nyssa in his *Letter to Letoius* were also in agreement. In 314, the Council of Ancyra ruled that in the case of unnatural vice such public sins as adultery, abortion, bestiality, incest with one's sister and theft required public penance. In the Eastern Church, by the beginning of the fifth century, the practice of public penance for secret sins had probably disappeared. It lasted longer in the Western Church.

Given the emphasis on public confession and public penance, there were no regulations regarding the seal though indications that confessed sins were to be kept secret began to emerge. The rudiments of the confessional seal begin to take hold in a remarkable development of a Church doctrine. St. Basil mentions a Church directive for safeguarding confessional secrecy while Augustine in *Sermo 82* emphasises that he endeavours to keep secret sins secret. By the time of Augustine, the dispute of whether secret serious is needed to be publicly confessed had been resolved – he simply does not mention public confession.

As Kurtscheid documents, it is with Pope Leo I, known as Leo the Great, in his letter to the bishops of Campania, Samnium and Picenum that we have the first decretal safeguarding the secrecy of confession. He considered it an abuse where secret sins were written down and read in open assembly in the practice of public penance. What worried Leo was that the shame and the fear of legal prosecution would be a deterrent for many from benefiting from the 'salutary remedy of penance'.

The documental silence until the ninth century suggests confessional secrecy had passed into normal pastoral practice. Public penance was never introduced into the Irish or English Churches – their missionaries would subsequently take the practice of secret, individual confessing to continental Europe. The emphasis was on secret atonement for secret transgressions. The Synod of Parvia in 850 did allow that confessional secrecy could be transgressed if the confessor needed advice – he could consult the bishop, but only if the sinner's name was kept confidential. At the close of the ninth century in the *Penitentiale Summorum Pontificum*, canon 105 represents the first direct legislation on the seal by the Western Church – breaking the seal was to be punished by removal from ecclesiastical office and lifelong exile. Other documents from the 10<sup>th</sup> and 11<sup>th</sup> centuries reinforce the seal.

In the context of confessional secrecy, Peter Abelard criticises those priests "who are light-minded and careless, and it is difficult for them to hold their tongues" (*Hon. II om Ramis Palmarum, Sermo VIII*). Anselm (1033 – 1109), Archbishop of Canterbury, was insistent on secrecy as a strict obligation of the confessor though the duty was still ill-defined. It is at this time that there emerged an issue that has dominated pastoral considerations until the 19<sup>th</sup> century as to whether the seal could be violated to prevent a calamity to the State or to the common good. It was also during this time during the 11<sup>th</sup> – 13<sup>th</sup> centuries that the controversies emerged about the use of knowledge received during a sacramental confession though the dominant thinking was that 'he must act as if not he, but God alone, knew this'.

The key moment in the history of the seal of confession is the Fourth Lateran Council in Rome in 1215 with the 21<sup>st</sup> canon headed *Omnis Utriusque Sexus* which legislated what synods and individual bishops had been saying for four centuries. It reads in full:

*All the faithful of both sexes shall after they have reached the age of discretion faithfully confess all their sins at least once a year to their own (parish) priest and perform to the best of their ability the penance imposed, receiving reverently at least at Easter the sacrament of the Eucharist, unless perchance at the advice of their own priest they may for a good reason*



*abstain for a time from its reception; otherwise they shall be cut off from the Church (excommunicated) during life and deprived of Christian burial in death. Wherefore, let this salutary decree be published frequently in the churches, that no one may find in the plea of ignorance a shadow of excuse. But if anyone for a good reason should wish to confess his sins to another priest, let him first seek and obtain permission from his own (parish) priest, since otherwise he (the other priest) cannot loose or bind him.*

*Let the priest be discreet and cautious that he may pour wine and oil into the wounds of the one injured after the manner of a skilful physician, carefully inquiring into the circumstances of the sinner and the sin, from the nature of which he may understand what kind of advice to give and what remedy to apply, making use of different experiments to heal the sick one. But let him exercise the greatest precaution that he does not in any degree by word, sign, or any other manner make known the sinner, but should he need more prudent counsel, let him seek it cautiously without any mention of the person. He who dares to reveal a sin confided to him in the tribunal of penance, we decree that he be not only deposed from the sacerdotal office but also relegated to a monastery of strict observance to do penance for the remainder of his life.*

Kurtscheid interprets the canon as requiring the confessor to treat his penitents ‘with leniency and prudence’. The seal rests solely on the confessor and it would take almost eight centuries before the seal was extended to the penitent. But he can seek advice from another but on the condition that the identity of the penitent is never revealed. Caesarius of Heisterbach reported various abuses such as the priest who attempted to seduce a woman penitent by threatening to reveal the contents of her confession. He was denounced by the woman and subsequently banished.

The absoluteness of the seal was stressed by many such as St Anthony of Padua who in commenting on Canon 21 wrote, “I maintain that whosoever reveals the confession made to him sins more grievously than the traitor Judas” (Kurtscheid 1927: 124 – 125). However, there continued to be disputation about the absoluteness of the seal. In his *Summa Aurea*, William of Auxerre documents the opinions of several theologians that the seal could be broken for grave reasons. Breaking the seal in extenuating circumstances would be always a very minority position.

Whilst the teaching of the Fourth Lateran Council was renewed in successive centuries, including at the Council of Trent, issues continued to arise. One question was: Can a confession be called a sacramental confession if it is made without contrition and without a firm purpose of amendment? Thomas Chabham of Salisbury Cathedral who wrote the most complete account of the Lateran decision placed the question in the context of heresy, asking whether a heretic who confesses his doctrinal errors but refuses to stop disseminating them nor to reveal and denounce his fellow heretics. His opinion that any confession made with the intention of continuing in a sinful state cannot be regarded as a sacramental confession, and hence the confessor is not bound by the seal. In fact, if anyone confesses that he or she is determined to commit some serious and damaging sin, the confessor would be bound to reveal the details. Other eminent canon lawyers in the 14<sup>th</sup> – 16<sup>th</sup> centuries such as Francis a Ripen and Jacob Menochius were of the opinion that the confessor must take the same attitude to future possible sins as towards other secrets confided to the priest outside confession which may be revealed for justified reasons. Only past and confessed sins fell under the seal.

### *Teaching of the French Church*

There emerged in France the so-called Gallican teaching which allowed for the breaking of the seal. Following a decree of King Louis XI in 1477 that required every citizen under pain of death to report

any known plot against the king or the state. In response, the canonical opinion was that the confessor is obliged to denounce conspiratorial and seditious plots as the theologians strove to accommodate Church practice to the civil law. Kurtscheid gives several examples including the conspiracy of Charles of Bourbon against King Francis I (1515 – 1547) where the Bishop of Autun was subpoenaed as a witness. The bishop said that he knew of the affair only through confession as Charles of Bourbon holding a particle of the true cross told him of the plot. It transpired that he had not made a complete confession and had not asked for nor received absolution. Because it was not a sacramental confession, this allowed the bishop to reveal all he knew. In 1547 in Paris, in the *Glossa Ordinaria* to the *Decretum Gratiani* it is recorded that a priest, if under threat of excommunication to hold to the seal could secretly communicate a confession to the bishop.

The Gunpowder plot in England had brought about the execution of the Jesuit, Father Garnet, because he had not broken the seal by denouncing the conspiracy which he knew about through the confession of Thomas Winter before the plot took place. Horrified at the revelation, the priest consulted in the confessional his superior who urged Fr. Garnet to do all in his power to dissuade Winter from carrying out the plot. But to no avail. The episode generated much antipathy against the Jesuits in the controversy that followed. King James I intervened, claiming that the Jesuits had instituted a new doctrine as the Scholastic theologians had taught that the seal could be broken when necessary to prevent a heinous crime though the name of the penitent should not be revealed. Fr Garnet was defended by Cardinal du Perron and Cardinal Robert Bellarmine in defending the strict view of the Jesuits of the inviolability of the seal. In France, the stricter view was not popular, and King Henry IV became very agitated in the very early 1600s when his confessor said the seal must never be broken, not even to save the king's life. Much pressure was put on the Jesuits and in 1612 they accepted, probably very reluctantly, the Sorbonne teaching in breaking the seal regarding the protection of the king's life. There were subsequent cases where the secrecy of the confessional was broken when priests were revealing conspiracies against the king. Gallican canonists such as Durand of Maillane expressly exempt the crime of *lese-majeste* from the confessional seal. Lenglet du Fresnoy (1708) cites seventeen violation cases though in about half of these cases Kurtscheid thought it is doubtful that the seal was broken.

Kurtscheid states very explicitly that he sees the French Gallican teaching as an aberration, quoting the names of many theologians over many centuries who usually based their view on the teaching of St. Thomas Aquinas that the seal was strict and universal. But controversy did not dissipate until the 20<sup>th</sup> century. A central issue was: **how can the obligation of the seal be reconciled with the precept of charity, which mandates that we should shield our neighbour against physical and spiritual injury to the best of our ability?** It raised the issue about the confessor making use of knowledge gained in the confessional to the detriment of the penitent. The negative response to the question was based on the claim that the information was beyond human knowledge. Quoting Thomas Aquinas, Kurtscheid summarizes, "Whatever the priest knows through confession he in a sense, does not know, because he possesses this knowledge not as a man, but as the representative of God. He may, therefore swear to his ignorance in court, because the obligation of a witness extends only to his human knowledge. Similarly a superior may let a transgression of a subordinate go unpunished if he knows of it solely through confession" (Kurtscheid 1927: 195). However, Aquinas does allow that a priest, once he keeps intact the integrity of the Sacrament, must take preventative measures to stop 'an impending calamity'. A member of a religious community in an election for a superior may not vote for a candidate if the unworthiness of the candidate is only known through the confessional. Duns Scotus is even stricter than Aquinas. Alexander of Hales writes that a priest may refuse communion to a person whom he knows to be unworthy through confession if he asks for communion in secret but such a refusal could not be exercised publicly.

The majority view that confessional knowledge could be used but only if others did not notice it had its opponents such as Richard of Middleton because it might deter Catholics from making their confessions. But the consensus was to hold to the strict view. Another issue regarding the lawful and unlawful use of knowledge gained through confession concerned bishops and religious superiors using confessional knowledge in making or participating in making appointments. Thomas Sanchez cites forty theologians and canonists who would consider it lawful though he himself, supported by Suarez and Cardinal de Lugo, held the contrary because the penitent may grow suspicious and some people would be deterred from confession. An interesting case was in 1673 when the vicar-general of Trent requested the clergy as to which sins were the most frequently committed in the city but they refused to comply. In China, some missionaries gave a certificate to those who had confessed so as to admit them to communion but in 1806 this was condemned by the Sacred Congregation for the Propagation of the Faith. At various times, the Holy Office complained about priests who spoke privately or publicly about what they heard in confession, even in sermons for ‘the edification of the people’ (Kurtscheid 1927: 240).

Another issue with a long history going back to the 11<sup>th</sup> century was whether in an emergency a penitent could confess to a layperson. Gratian, Peter Lombard and Huguccio were in agreement while Albert the Great and Aquinas gave it a quasi-sacramental character (Aquinas uses the phrase ‘*quoddam sacramentale*’). But the view was opposed by the Franciscan school led by Alexander of Hales and Bonaventure as well as Duns Scotus. Was the lay confessor bound by the seal? Pope Innocent IV answered in the affirmative as did Aquinas. This opinion was held until the middle of the sixteenth century when the view that the lay-confessor was held to a natural but not sacramental silence. If a person confesses to a layman believing him to be a priest, the layman is bound by the seal.

Another issue was the use of an interpreter for a confession. Thomas Aquinas argued that because the interpreter supplements the actions of the priest, the interpreter is obliged to strict silence and, in the view of most but certainly not all commentators, to the sacramental seal. But that the penitent was not bound by any sacramental secrecy was accepted by all authors.

The next issue was the extent of the coverage of the confessional seal. Kurtscheid responds, “The Seal of confession, therefore, extends to all those communications the revelations of which would lower the penitent in the estimation of the others and thus deter him from the Sacrament of Penance” (Kurtscheid 1927: 266). Directly under the seal were the actual sins whereas other information which might cause the identity of the penitent to be known were indirectly under the seal. Another interesting question was whether confessors could reveal confessional material in any posthumous process to beatify or canonize some holy person or martyr. In *De Servorum Dei Beatificatione et Canonizatione*, Pope Benedict XIV ruled in the affirmative but the Church’s magisterium changed its mind on this in the 1917 Code of Canon Law (Canons 2027 #2, no. 1 and 1757 #3, no. 2).

There was also debate as to whether the seal is based on natural law and/or divine law. The Fourth Lateran Council had not ruled on this though later councils ruled that confession is a divine institution. The opinion was firm that it cannot be based merely on ecclesiastical law which would imply that a pope could dispense with the seal. Yet not even a pope can dispense a priest from the obligation of keeping the sacramental seal. The seal belongs to the essence of the sacrament though it is not the core of the sacrament which is absolution. The argument that it is based on divine law is not without problems though Kurtscheid, as have most theologians and canonists though not Suarez and Cardinal de Lugo. As he acknowledges himself, there is no express command of Christ regarding the confessional seal and in the early Church the form of the sacrament was unequivocally public confession because the public humiliation was seen to be efficacious.

The next issue was whether and how far an individual penitent could authorise to dispense the confessor from the obligation to secrecy because not even the pope can make such a dispensation. Some such as Alexander of Hales and Duns Scotus considered that the penitent cannot make such a dispensation because of the *bonum commune* of the sacrament because the Catholic community had ‘an incontestable right’ to universal secrecy of the confession. A more middle position emerged, saying that it could be given only when it was necessary and advantageous for the reception of the sacrament. It was only in the 1983 Code that the seal was extended to the penitent (Rosney 2008).

Prior to the Fourth Lateran Council, there were few stated penalties for violating the confessional seal. The subsequent penalty of ecclesiastical imprisonment became problematic given that eventually the Church no longer has the right to inflict the penalty. The ecclesiastical penalties were severe e.g. fasting three times a week on bread and water to be taken kneeling on the floor followed by prostration on the floor in the doorway with his brethren stepping over him to humiliate him. The 1917 Code of Canon Law, following a 1915 Instruction of the Holy Office makes a clear distinction between direct and indirect violation of the seal with excommunication for the former and for the latter it can be a sentence such as suspension from saying Mass, from hearing confessions, loss of ecclesiastical benefices or honours and even formal laicization similar to those for soliciting in the confessional (canon 2368).

### **The Seal of Confession and the Civil and Criminal Law**

As we have already indicated, after Kurtscheid’s encompassing and thorough research, not much attention was given to the issue of the confessional seal from the review of the literature as conducted by the RMIT research team. Several canonists (Moriarty 1998, Connaghan 2011, Coronelli 2013, Daly 2013) have written of the inviolability of the seal, representing the highest and most rigorously protected form of secrecy within the Church (Coronelli 2013). Some attention has been given to a comparison of the Eastern and Western codes regarding the Sacrament of Penance (Abbass 2011) but much more attention since the Second Vatican Council to the third rite of reconciliation and general absolution where the penitent is not required to make an individual confession unless they have committed a serious mortal sin.

However, much attention has been given to the intersection of the seal and the common law in the context of the right to religious freedom together with legal history. Zubacz (2009) has examined the issue in the Canadian context whereas the New Zealand legal scholar, S. K. Thompson, has provided a very focused and very well-researched account of the privileging of the confessional seal in the major common law countries.

Thompson (2011) broadens the debate beyond religious confession in the various Christian traditions to a religious communications privilege analogous between a lawyer and client and physician and patient. He is very dismissive of evidence law textbooks as being misdirected and misinformed in accepting the conclusion that no religious confession privilege at common law existed. He goes back to when the first such texts began to appear at the beginning of the 19<sup>th</sup> century with Peake in 1801, Phillips in 1814 and Starkie in 1824. Who admitted no such policy However, there were some exceptions with Best in 1849, Nokes in 1950 and Winchworth in 1952.

Thompson (2011) notes that except for Queensland, South Australia and Western Australia, the other seven jurisdictions in Australia have religious confession privilege statutes. In New Zealand, the privilege was accepted in 1885 with the Evidence Further Amendment Act, broadened in 1895. The 2006 Act broadened it even further making New Zealand “one of the most generous expressions in the common law world” (Thompson 2011: 374).

Justification for the privilege has been made simplistically in terms of freedom of religion and conscience. Thompson gives five other reasons adduced for the privilege beginning with the protection of the confidentiality of religious communications because of their special nature together with the privacy interests of the penitent. A third reason given by Thompson (2011) would be the futility principle insofar as the priest confessor would always be prepared to be imprisoned if required to give evidence about his confessional knowledge. As an extension of this is the legitimacy principle based on Benthamite utilitarianism that the legitimacy of the courts would be undermined by the futility principle. The last reason is the 18<sup>th</sup> century idea that no one should be compelled to give evidence.

Thompson (2011) who supports the common law privilege suggests that no single argument suffices but only the aggregation of all the reasons. His view is that the strongest argument for a religious communications privilege in his view is society's interest in the preservation of the religious freedom principle.

### **The Confessional Seal in the Context of Clerical Child Sex Abuse**

Bertrand Kurtscheid would have been well aware of Pius X's Instruction in 1910 *Quam Singulari* that lowered the age of first confession. He does not make reference to it in his treatise even though he was well aware of the problem that soliciting in the confessional had been an issue for many centuries in the Church. Younger children were now at risk. It is surprising, perhaps even reprehensible, that Kurtscheid himself, canonists and sacramental theologians throughout the whole of the twentieth century failed to alert themselves and discuss the seal of confession and the duty of care that was intrinsically being placed on the confessor.

There were serious issues at stake regarding firstly information given by children during a confession. It is likely that this occurred but the priest would have felt obliged to not act on the information even though it was not an actual sin of the child. The child was probably in danger of further sexual assault. The other issue concerned confessions made by offending priests and brothers themselves to a confessor priest. Both Keenan (2012) and Winship (2013) refer to this issue - no confessor seems to have withheld absolution until the perpetrator had made a confession to criminal justice or even church authorities as had happened in the past as we have seen.

In our review of the literature, only one article discussed confession in the context of child sexual abuse. Joe Grayland, a New Zealand liturgical theologian, has reflected on the fact that Catholic confession grossly underplays restitution to the victim. "The present rites' critically underdeveloped theology is due in part to its overdeveloped emphasis on the individual penitents' confession of sin and their immediate absolution effectively limits our understanding of restitution" (Grayland 2004: 156). He insists that while the actual confessing of one's sins is necessary, the core element of the confession is 'the process of penance'. He is critical of the Roman-Irish monks who spread the practice of confession throughout Europe in the 10<sup>th</sup> century. He concludes that the present rite of sacramental reconciliation in dealing with a very grave public sin such as child sexual abuse is seriously inadequate because it undervalues and ignores the need for a just and interrelation restitution (Grayland 2004). The name change at the time of the Second Vatican Council from the Sacrament of Penance to the Sacrament of Reconciliation should have presaged not only in the 1960s and subsequently both so-called progressives and conservatives, to the issue of reconciliation and restitution to the victims. But it did not as they concerned themselves with fierce culture debates over general absolution and the other introduced rites of reconciliation and lamented over the precipitous decline in confessional attendance as Catholics stopped going to confession. While all this was happening, countless children were being abused by predator priests and brothers.

*Taken from Cahill, D. & Wilkinson, P. **Child Sexual Abuse in the Catholic Church** (RMIT University, Melbourne), Appendix 2.*



## APPENDIX SIX

# HISTORICAL AND CONTEMPORARY PROFILE OF CATHOLIC CHURCH IN NEW ZEALAND

Dr Peter Wilkinson

### Christian missionary activity in the 19<sup>th</sup> century

The arrival of the Catholic Church in New Zealand was due to an unusual expansionary period of missionary activity in the early 19<sup>th</sup> century, fuelled by the spirit of Romanticism, a spirit of the early 19<sup>th</sup> century which depicted the missionary as “one going out to the ‘good but degraded savage’ as the great uplifting agent whose humble prayer and witness have more value and efficacy than the knowledge and the science of the savants.”<sup>20</sup> After the devastation of Catholic missions<sup>21</sup> during the French Revolution, with its anti-Catholic fury, this spirit found fertile soil in France and soon gave rise many new religious missionary congregations eager to evangelize the pagan peoples of Africa and Oceania, among them the Society of Mary (Marists), even though they had no experience and no special preparation.

Unlike earlier periods, the new Protestant - especially British – missionary thrust created a volatile competitiveness. It occurred during a period of European colonialism spearheaded by the Dutch and English Protestant powers. By mid-19<sup>th</sup> century the missionary movements of both Catholics and Protestants were massive, and no longer financed by kings and princes, but by ordinary lay people of faith.

Underpinning the missionary thrust was a theology which held that there was “no salvation outside the Church” and that the so-called ‘infidels’ had to be evangelized and baptised. Winning converts from non-Christian religions or other beliefs and baptizing as many as possible was the prime objective and a uniform Catholic strategy for achieving this was devised. Catholic missions worldwide were directed centrally by the Sacred Congregation de Propaganda Fide (‘Propaganda’), a central agency of the Holy See.

### Catholic mission strategies of Propaganda

To successfully evangelize people who had never heard the Gospel and Jesus Christ and to bring them into the community of the Catholic Church, Propaganda devised several key strategies: 1) appoint sufficient bishops and establish a Catholic hierarchy; 2) establish seminaries to form a local indigenous clergy, educated to a high standard so that they can take on all roles, including catechist, leader, and bishop; 3) ensure indigenous clergy have equal rights with foreign clergy; 4) ensure missionaries keep out of secular and political affairs; 5) establish schools for boys and girls to provide secular and religious education; 6) engage in works of charity and establish charitable institutions where needed; and 7) establish mission printing presses with publishing in local languages.

To implement these strategies, Propaganda sent missionary priests and religious brothers and sisters, principally from Europe, to the designated territories to assist the bishops in evangelization, catechesis, pastoral care, schools (primary, secondary, boarding, special), orphanages, health clinics, and charitable works.

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<sup>20</sup> François-René de Châteaubriand, *Génie du Christianisme*, Paris, 1802. Cf. Book IV, Part IV, Ch. IX.

<sup>21</sup> France had hundreds of Catholic missionaries throughout the world before the Revolution, but

## Strategy 1: Establish a Catholic hierarchy

To initiate the evangelization of the indigenous peoples of Western Oceania (including New Zealand, Fiji and the Navigator and Friendly Islands), a territory colonized by Great Britain, in 1835 Pope Gregory XVI (1831-1846) established the Vicariate Apostolic of Western Oceania with French priest Jean-Baptiste-Francois Pompallier as its first bishop.<sup>22</sup> In 1842, to encourage a more intense evangelization of the New Zealand Māoris, and to assist with the pastoral care of increasing numbers of European Catholic settlers, Gregory XVI established the Vicariate Apostolic of New Zealand, with Pompallier as bishop, and in 1845, appointed Philippe-Joseph Viard SM his coadjutor.<sup>23</sup>

In Catholic Church law, the ‘metropolitan’ bishop (archbishop) is the bishop of the most important diocese (metropolitan see) of an ecclesiastical province, with certain rights and duties in relation to his ‘suffragan’ bishops and dioceses. Under rules set down by the Council Trent (1545-63), diocesan bishops immediately subject to the Holy See and lacking a metropolitan bishop, were to join themselves to a neighbouring metropolitan see for the purpose of holding provincial councils which can make laws to suit the province. Until 1887, when the Archdiocese of Wellington became a metropolitan see, the bishops of New Zealand, who were immediately subject to the Holy See, looked to the Metropolitan Archbishop of Sydney for the purpose of particular councils (provincial and plenary). Legislation formulated by such councils and approved by the Holy See were to be applied in all dioceses and vicariates within the province (for provincial councils) or within the nation (for plenary councils).

Though Bishop Pompallier was not present at the 1<sup>st</sup> Australian Provincial Council in 1844, he was given the text of the decrees, approved by the Holy See in 1852, and presumably adopted them. One important decree of that council was that “church property was to be held in trust and managed by a board of trustees”. Neither of the two New Zealand bishops, Pompallier and Viard, attended the 1869 2<sup>nd</sup> Australian Provincial Council, but it might be assumed that its legislation too was applied in New Zealand. The *2018 Annual Financial Report*<sup>24</sup> of the Diocese of Christchurch would indicate that the dioceses in New Zealand were established according to the 1844 Council’s decree.

When Pope Leo XIII appointed Cardinal Moran of Sydney to convene and preside over a ‘plenary council’ to be held in Sydney in 1885, he was instructed to invite the bishops of both Australia and New Zealand, and all three New Zealand bishops - Luck (Auckland), Redwood SM (Wellington), and Moran (Dunedin) – attended. In 1887, acting on a recommendation of the 1885 Council to establish a hierarchy in New Zealand, Pope Leo XIII (1878-1903) raised Wellington to an archdiocese and made it the metropolitan see for the new Province of Wellington. The Church in New Zealand was now fully independent of Australia. Among the 274 decrees of the 1885 Council, which became church

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<sup>22</sup> The most authoritative work on the early history of the Catholic Church in Oceania is Ralph Wiltgen SVD’s *The Founding of the Roman Catholic Church in Oceania, 1825-1850* Cardinal Moran devotes Chapter XIX to New Zealand (pp. 889-958) in his *History of the Catholic Church in Australasia*, Coffee & Co., Sydney, 1896.

<sup>23</sup> <https://www.faithcentral.org.nz/wp-content/uploads/2013/03/catholicsinnz.pdf>

<sup>24</sup> Cf. <https://chchcatholic.nz/wp-content/uploads/2019/07/2018-Annual-Report.pdf>. Corporate Information: These financial statements of the Roman Catholic Diocese of Christchurch Diocesan Trust (the “Diocese”) for the year ended 30 June 2018 were authorised for issue by the Roman Catholic Bishop of the Diocese of Christchurch in accordance with a recommendation from the Diocesan Management and Finance Board on 3 October 2018. The Diocese is registered as a charitable trust and is domiciled in Christchurch New Zealand. The Diocese relates to the administration function of the Roman Catholic Diocese of Christchurch, and is controlled by the Roman Catholic Bishop of the Diocese of Christchurch (the “Corporation Sole”), who is the sole trustee of the Diocesan Trust. The Diocese been delegated authority by the Corporation Sole to hold and administer a number of Diocesan assets and matters which have been recorded in the Diocese financial statements: ` Land and buildings of some Catholic schools, and the Cathedral of the Blessed Sacrament. ` Earthquake insurance proceeds and repairs in relation to Parish property.

law in New Zealand as well as Australia, were several on church property, one of which stated: “all ecclesiastical property is to be held in trust in the name of at least three persons, of which the diocesan bishop and two priests are to be members” (Decrees 267-274).

When Cardinal Moran was planning the 1895 2<sup>nd</sup> Plenary Council in Sydney, he was instructed by Propaganda not to invite the New Zealand bishops, as they were to hold their own provincial (effectively plenary) council in 1899. Nor was Moran permitted to invite the New Zealand bishops to the 1905 Plenary Council. However, the New Zealand bishops were invited to attend the 4<sup>th</sup> Australasian Plenary Council held in Sydney on 4-12 December 1937. Four attended: O’Shea (Wellington), Liston (Auckland), Brodie (Christchurch) and Whyte (Dunedin). The 1937 Plenary effectively abrogated all 371 decrees of the previous provincial and plenary councils, which had attempted a more sensitive legislative response to the Australian and New Zealand contexts, and replaced them with 685 decrees that were more reflective of the 1917 Code of Canon Law applicable to the universal Church. At present the 1983 *Code of Canon Law* determines the way the Catholic Church operates and administers itself as a hierarchical institution in New Zealand.

However, whereas the Catholic Church in Australia was removed from the jurisdiction of Propaganda (now known as the Congregation for the Evangelization of Peoples) in 1976, New Zealand and other nations in Oceania – including Fiji and Papua New Guinea – were not, and retain all their ‘missionary faculties’.

Currently the Church in New Zealand is made up of 6 territorial dioceses (see Map below):

Wellington (Yellow),  
(Blue), Palmerston North  
(Green) and Dunedin  
province of Wellington.



Auckland (Dark Blue), Hamilton  
(Light Green), Christchurch  
(Black) – within the ecclesiastical

While current (1983) canon law, provides very limited authority to metropolitan bishops over their suffragan dioceses, they are competent to “exercise vigilance” in faith and disciplinary matters, “to report abuses to the Pope”, and to “conduct a canonical visitation” in certain circumstances (C. 436.1-2). They have no authority of intervene in the affairs of their suffragans on their own initiative, but the Holy See can give them, where circumstances demand, special and limited functions and power (C. 436.2). In general, their role is that of ‘circumscribed oversight’ over the whole province.

**Table 1. Establishment of the Catholic Hierarchy in New Zealand**

<b>Year</b>	<b>Establishment of Ecclesiastical structures</b>	<b>Ecclesiastical Authority</b>
1835	VA of Western Oceania (Includes NZ)	Directly subject to Holy See
1842	VA of New Zealand	Directly subject to Holy See
1848	Dioceses of Auckland & Wellington	Metropolitan of Sydney (1842-1887)
1869	Diocese of Dunedin (from Wellington)	Metropolitan of Sydney (1842-1887)
1885	1st Plenary Council of Australasia	Metropolitan of Sydney (1842-1887)
1887	Diocese of Christchurch (from Wellington)	Metropolitan of Wellington
1887	Metropolitan Archdiocese of Wellington	Metropolitan of Wellington
1899	1 <sup>st</sup> Provincial Council of Wellington	Metropolitan of Wellington
1937	4th Plenary Council of Australia & NZ	Metropolitan of Wellington
1976	Military Ordinariate of New Zealand	Metropolitan of Wellington
1980	Dioceses of Hamilton (from Auckland) & Palmerston North (from Wellington)	Metropolitan of Wellington

New Zealand also has a Military Ordinariate and is part of the Melkite Eparchy of Saint Michael the Archangel (Sydney), the Chaldean Eparchy of Oceania (Sydney), and the Ukrainian Eparchy of Saints Peter and Paul (Melbourne).

**Table 2. Current Dioceses and Ordinariate and Bishops of New Zealand**

<b>Diocese</b>	<b>Bishop</b>	<b>Birthplace</b>	<b>Date of Birth</b>	<b>Appointed</b>
Auckland	Patrick James Dunn	London, UK	6 Feb 1950	19 Dec 1994
Wellington	John Atcherley Dew	Waipawa, NZ	5 May 1948	21 Mar 2005
Dunedin	Michael Joseph Dooley	Invercargill, NZ	13 Dec 1961	22 Feb 2018
Christchurch	Paul Martin SM	Hastings, NZ	5 May 1967	5 Dec 2017
Hamilton	Stephen Marmion Lowe	Hokitika, NZ	3 Aug 1962	22 Nov 2014
Palmerston North	Charles Edward Drennan	Christchurch, NZ	23 Aug 1960	22 Feb 2011

Military Ordinariate	John Atcherley Dew	Waipawa, NZ	5 May 1948	1 Apr 2005
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New Zealand has a Catholic Bishops Conference which has links with other conferences, including the Australian Conference, in the region through the Federation of Catholic Bishops' Conferences of Oceania (FCBCO).<sup>25</sup>

Like the Church in Australia, many early appointed bishops in New Zealand were from England and Ireland, but from 1913, in line with Propaganda's strategic policies, more and more New Zealand born bishops were appointed<sup>26</sup> (cf. Table 2). Since 1835 New Zealand has had 43 bishops (including the current 6). They include 1 Australian, 6 English, 2 French, 5 Irish, 1 Dutch, 1 American, and 27 New Zealanders (63%). The first NZ –born bishop was appointed in 1913.

In 2018 there were 471,031 Catholics in a total population of 4,699,755, constituting 10.02 per cent of the total population and making them the largest Christian denomination in the nation. Their origins and ethnicities are diverse: Māori, English, Irish, Scottish, French, Italian, Polish, German, Croatian, Dutch, Portuguese, Indian, Pacific Island, Korean, Vietnamese, Chinese and Filipino.

### **Strategy 2: Establish seminaries to form and educate a local indigenous clergy**

**St Mary's College:** Bishop Pompallier established the first seminary, St Mary's College, in 1850 when he returned to Auckland with 10 seminarians. Nine were ordained soon after. A further 24 seminarians, all Europeans and some partly educated in France or Ireland, were ordained before the seminary closed in 1869. St Mary's also educated many Māori catechists, who proved the mainstay of Māori evangelisation. No Māori priest was ordained from this College.<sup>27</sup>

From 1870 to 1900, when there was no seminary in New Zealand to prepare diocesan priests, candidates were usually sent to St Patrick's College, Manly, NSW, which Cardinal Moran had opened in 1889 and accepted candidates from all dioceses of Australia and New Zealand. Before 1900, four seminarians from New Zealand dioceses were ordained from Manly, with a further 8 before 1926.

**Mount St Mary's Marist College:** The first Marist priests and brothers to arrive in New Zealand were from France, then from Ireland and England, and later, Australia. Several were bishops: Viard, Grimes, Redwood, O'Shea, Mariu (Māori) and Martin. In 1889 the New Zealand Marist Province was established with their main mission being the evangelization of the Māori people. It was later modified to include more pastoral ministry with the arrival of European- mainly Irish – Catholic settlers.

<sup>25</sup> Other conferences who are members of the FCBCO include the Bishops' Conference of Papuan and New Guinea and the Solomon Islands (CBCPNGSI) and the Episcopal Conference of the Pacific (CEPAC) representing many islands in the Pacific.

<sup>26</sup> Since 1835 New Zealand has had 43 bishops (including current 6). They include 1 Australian, 6 English, 2 French, 5 Irish, 1 Dutch, 1 American, and 27 New Zealanders (63%). The first NZ –born bishop was appointed in 1913. (For full list of all bishops, cf. Attachment 1).

<sup>27</sup> The first initiative to form a local indigenous clergy in Oceania was in 1859 when the French Marist Fathers, led by Bishop Bataillon, established a junior seminary at Clydesdale, near Blacktown (now a suburb of Sydney, NSW), for the purpose of educating young men from the Pacific Islands for the Marist missions in Polynesia and Fiji. Student numbers peaked at 28 in 1864, but not a single candidate was ordained. The seminary closed in 1869

To recruit and form New Zealand-born Marist priests, a seminary was established in Wellington in 1889, moved to Meeanee in Hawkes Bay in 1890, and moved again in 1900 to a higher location at Greenmeadows. It became known as Mount St Mary's College. The Napier Earthquake in 1931 collapsed the chapel killing 7 seminarians and 2 priests. A separate novitiate was established at Palmerston North in 1924, and the formation program, like elsewhere, was Tridentine and enclosed. In 1992 the seminary was relocated to Auckland, where academic courses are provided at Good Shepherd College.

The 8 secondary college established by the Marists – St Patrick's, Wellington (1885), St Bede's, Christchurch (1911), St Patrick's, Silverstream (1931), St Patrick's, now Roncalli, Timaru, (1938), St John's, Hastings (1941), St Augustine's (now Cullinane), Wanganui (1944). Hato Paora, Feilding (1947), Pompallier, Whangarei (1971 -have served as preparatory schools for the Marist seminary as well as recruiting grounds. In 1945, six colleges with 57 Marist staff were educating 1155 students, and in 1995 the 8 colleges with 30 Marist and 270 lay staff were educating 3674 students.

**Table 3: Seminaries established in New Zealand, 1850-2019**

Years operating	Seminary	Type	Staff	Ordained
1850-1869	St Mary's College, Auckland	Diocesan Seminary	Marists	24 (+ 10 in 1850)
1889-1992	Mount St Mary's College, Wellington (1889-1911), Meeanee, Hawkes Bay (1911-92)	Marist Seminary	Marists	1 <sup>st</sup> ordination 1893
1900-1997	Holy Cross College, Mosgiel	National diocesan minor & major seminary	Diocesan (1900-33); Vincentians (1934-89)	Total 1302 seminarians (1900-97); 648 ordained
1924	Marist Novitiate, Awahuri	Marist Novitiate	Marists	
1943-45	St Columban's Seminary, Lower Hutt (Spiritual Year only)	Columban seminary for missionary priests	Columbans	52 ordained from 1926-80
1947-1978	Holy Name Seminary, Christchurch	National diocesan minor and major seminary. Ceased as minor seminary in 1959	Jesuits	Total 343 seminarians (1964-78); 91 ordained
1992-present	Mount St Mary's relocated to Auckland	Marist Major Seminary	Marists	



1998-present	Holy Cross College, relocated to Auckland	National diocesan major seminary	Diocesan	2019 :18 seminarians
1998	Good Shepherd College, Auckland	Catholic Theological College	Marist, diocesan, other	Diocesan and Marist seminarians
?	Mill Hill Fathers Novitiate, Auckland	Mill Hill Novitiate	Mill Hill Fathers	?

**Holy Cross College:** Bishop Moran of Dunedin in particular decried the lack of a New Zealand national seminary, but it was not until 1900, after the 1899 1<sup>st</sup> Provincial Council of Wellington had decided to establish a National Seminary for Diocesan Clergy, that Bishop Michael Verdon, second bishop of Dunedin (1896-1918), and formerly rector of the Manly seminary (1889-95), opened the Holy Cross College, a combined minor and major seminary, at Mosgiel. Accepting the role of rector himself, he appointed diocesan priests as staff, and started with 11 students in residence. The first ordination was in 1902 when 22 students were enrolled. In 1909 a further 6 priests were ordained.

Like the Sydney seminary, Holy Cross was totally Tridentine, with a quasi-monastic formation program separating its candidates from ordinary people and the world. The program gave seminarians a narrow and rigid vision of re-entering the world and saving people from it. Over time, it became increasingly isolated and secluded, an oasis of solitude forming secular priests for ministry within an established minority community in order to preserve the identity of that community. This orientation persisted until Vatican II, which called for dialogue with the world. Only after Vatican II did the seminary begin to open and move to collaborate with the University of Otago, introducing a BTheol degree and pastoral studies. However, by the late 1970s seminarian numbers had begun to fall and the quality of its educational standards was negatively assessed. With the major population growth in the North Island, the bishops relocated Holy Cross to Auckland in 1998 and joined it with the already relocated (in 1992) Mount St Mary's Marist seminary to provide a higher standard of academic curricula at the new Good Shepherd Theological College staffed by diocesan, Marist and other qualified professors.

Most diocesan priests ordained since 1900 are graduates of Holy Cross College, and currently (2019) it has 16 students in residence and 2 in parish placement. They come from 8 different birthplaces: NZ, Tonga, Fiji, Vietnam, Korea, HK, PI, Malaysia, and are aged 23-45 years.

**Holy Name Seminary:** From 1932 onwards Holy Cross College was no longer able to accept minor seminarians. At the 1937 4<sup>th</sup> Plenary Council of Australia and New Zealand, held in Sydney, the establishment of a national minor seminary for New Zealand was proposed, and in 1939 Propaganda instructed the New Zealand bishops to proceed. The new Holy Name minor seminary for diocesan (secular) priests was opened at Riccarton in the Christchurch diocese in 1947, and staffed by priests of the Society of Jesus. It opened with 40 students aged 13-14 years, who were immediately introduced to 'clericalism' with the wearing of long soutanes as standard dress.

While initially intended to be an exclusively minor seminary preparing students for entry to the Holy Cross major seminary, by the 1950s an increasing number of priestly candidates was causing overcrowding. In 1954 Holy Name took on the role of providing the major seminary philosophy curriculum, and from 1955 stopped taking any more minor seminarians. In 1959, it ceased functioning as a minor seminary and instead provided the 2-year major seminary philosophy program. From the mid-1960s the seminarians were able to study degree courses at the University of Canterbury, but by the late 1970s, as numbers were falling, Holy Name was closed in 1978. From

1964-1978 a total of 343 studied at Holy Name, with 91 eventually ordained. The building was destroyed by fire in July 2019, together with its academic records.

**St Columban's Seminary:** The Missionary Society of St Columban arrived in New Zealand in 1918 and established its base at Lower Hutt in the Archdiocese of Wellington. To form priests for its missions in China, Japan, Korea, Burma and the Philippines, it opened a seminary in Lower Hutt in 1944 for the 1-year Spiritual Year program. Just 6 were enrolled, and the program closed with the end of World War II. Candidates were then sent to the seminary in Melbourne. Prior to 1926 all candidates were sent to Ireland, and later to Australia. From 1926 to 1980 52 New Zealand Columban priests were ordained – the first 3 in Ireland in 1935 - and served both overseas and in New Zealand.<sup>28</sup> Since 1980, no New Zealand candidates have come forward.

**Good Shepherd College:** After seminarian numbers had begun to decline in the late 1970s, and with no sign of a resurgence, the Marists relocated their Mount St Mary's Seminary from Hawkes Bay to Auckland in 1992 and in 1998 the New Zealand bishops did the same with Holy Cross College – from Mosgiel to Ponsonby. Together, in 1998, the Marists and bishops set up a new Catholic Theological College named Good Shepherd College, to provide a high standard of academic education for candidates for the diocesan and Marist priesthood and for other persons. They formed a Trust to own and govern the college, formed an association with the Catholic Institute in Sydney, and pooled their resources. Both seminaries continue to offer their own separate priestly formation programs reflecting their particular charism.

Seminary formation in New Zealand, as elsewhere, followed the instructions and guidelines set down initially by the Council of Trent (1545-63), adopted the regulations instituted by St Charles Borromeo of Milan in 1564<sup>29</sup> for seminary discipline, and throughout the 20<sup>th</sup> century adhering closely to the official instructions issued by the Holy See.<sup>30</sup> More recently the national bishops' conference has developed a New Zealand version of the standard *Ratio Fundamentalis Institutionis Sacerdotalis* (Fundamental Program for Priestly Formation) for the local context, with special attention to the safeguarding of children. The recent Synod of Bishops focused on Youth made particular reference to sexual abuse and the formation of priests in its Final Document.<sup>31</sup>

There were small numbers of candidates for the priesthood until WWII, but then numbers exploded (Figure 1) to reach 293 in 1960. Thereafter, a rapid decrease began, with a brief pause in the 1970s, but a continuation of the decline until 2000 when it bottomed out at around 30 seminarians, and

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<sup>28</sup> Charles Rue provides some insight into seminary training in the 1950s: "Why did McGlynn retain his position in seminary training for such a long period in spite of his reported limitations? Part of the answer was the shortage of Columban personnel in Australia and the dynamic work capabilities of McGlynn. Another part of an answer was the type of spirituality he epitomised, focused on externals and exercises, the then accepted way carried to Australia from Dalgan [Ireland]. Yet another part of the answer was an aversion within clerical circles to confront an ordained priest and hold them accountable. Once ordained a priest was regarded as being prepared for any church role, and there was a reluctance to remove him from an assigned role lest it reflect badly on the high status of the priesthood. This attitude was to complicate ongoing reform of the Columban seminaries even after McGlynn's time, although, members with innovative ideas were more likely to be held accountable." Cf. Rue, Charles, *Journey to the margins: The contribution of the Missionary Society of St Columban to the Theory and Practice of Overseas Mission within the Australian Catholic Church 1920-2000* (unpublished PhD thesis) ACU, 2002

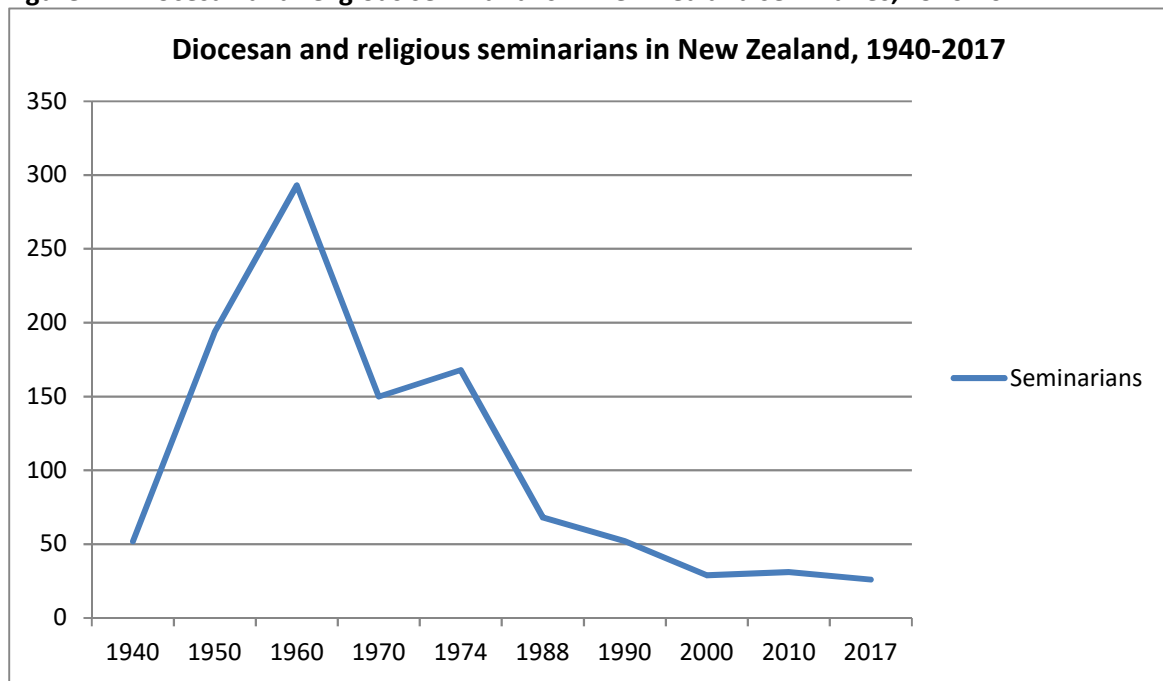
<sup>29</sup> *Institutiones ad universum Seminarium regimen pertinences*

<sup>30</sup> Cf. Cahill, D and Wilkinson, P, *Child Sexual Abuse in the Catholic Church: An Interpretative Review of the Literature and Public Inquiry Reports*, RMIT, 2016, Appendix 4

<sup>31</sup> <http://www.synod.va/content/synod2018/en/fede-discernimento-vocazione/final-document-of-the-synod-of-bishops-on-young-people--faith-an.html> Cf. Appendix 1 with selected extracts relating to seminary formation.

had remained there for the past 17 years. Many of the current seminarians were born outside New Zealand or been recruited from other churches.

**Figure 1. Diocesan and religious seminarians in New Zealand seminaries, 1940-2017**



Sources: *Australasian Catholic Directory* 1940-1975; *Statistical Yearbook of the Church*, 1999-2017

### **Strategy 3: Ensuring indigenous clergy have equal rights with foreign clergy**

Among the 48 decrees of the 1844 1<sup>st</sup> Provincial Council of Australia, many were specifically directed to the life and discipline of priests, insisting that they see themselves as ‘itinerant missionaries’ and, importantly, having no distinction between ‘parish priests’ and ‘curates’, as there was in Ireland. All priests were to be of equal status.

While few Māori men have been ordained to the Catholic priesthood, from 1853 an ordained clergy emerged in the Protestant churches founded by foreign missionaries. These ordained Protestant indigenous ministers succeeded and largely superseded an earlier large force of lay “teachers.” However, the colonial context of the second half of the 19<sup>th</sup> century confined the Māori churches and their clergy to a restricted place in the ecclesiastical life of New Zealand.<sup>32</sup>

### **Strategy 4: ensure missionaries keep out of secular and political affairs**

At a meeting – not a provincial council -of the bishops in 1862, a *Supplement* was drawn up with directives for the missionary priests in Australia, including the specific one that they were “to stay out of politics”. It might be assumed the *Supplement* was forwarded to Bishop Pompallier and that

<sup>32</sup> Cf. Lange, Raeburn, *Ordained Ministry in Maori Christianity, 1853–1900*, 2003 in *Journal of Religious History*, February 2003. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-9809.00164> The author examines the transition from “teachers” to “ministers” in the Church Missionary Society (Anglican) and Wesleyan missions is examined, as well as the place of indigenous ministers in the Maori Anglican and Wesleyan churches, the Mormon church, and the Maori religious movements such as Ringatu.

he applied it to his own missionary priests in New Zealand. For the first 50 years of the Catholic Church in New Zealand the priests, both diocesan and religious were overseas-born, and predominantly from France, Ireland and England. The first New Zealand born priest was ordained in

1893, followed by Matthew Brodie (later bishop) in 1894. More locally born priests emerged with the establishment of the local diocesan and Marist seminaries.

**Table 4. Foundations of Clerical Religious Congregations in New Zealand, 1835-2019**

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<b>Congregation</b>	<b>Foundations made</b>	<b>Special ministries</b>
Society of Mary (Marists)	VA (1835-1842)	Māori missions, education, pastoral care
St Joseph's Foreign Missionary Society (Mill Hill)	Auckland, 1886	Māori missions
Congregation of Most Holy Redeemer (Redemptorists)	Wellington, 1905; Dunedin, 1957	Parish missions
Congregation of the Mission (Vincentians)	Dunedin, 1934 (since withdrawn)	Seminary formation
Order of St Francis (Franciscans)	Auckland, 1938	Parish missions, pastoral care
Society of St Columban	Wellington, 1942	Foreign missions
Society of Jesus (Jesuits)	Christchurch, 1947 (since withdrawn)	Seminary formation
Order of Preachers (Dominicans)	Dunedin, 1949	Education
Assumptionist Fathers	Wellington, 1954; Auckland, 1954	Pastoral care of Dutch migrants
Order of Cistercians of the Strict Observance (Cistercian Monks)	Wellington, 1954	Prayer and Contemplation
Capuchin Franciscan Friars (Capuchins)	Wellington, 1958	Pastoral care
Congregation of the Passion of Jesus Christ (Passionists)	Auckland, 1960	Parish missions
Institute of Charity (Rosminians)	Auckland, 1960; Dunedin, 1967	Education
Congregation of the Sacred Hearts of Jesus and Mary (Picpus Fathers)	Wellington, ?	
Oblates of Mary Immaculate (Oblates)	Auckland, 1960s (Since withdrawn)	Education
Society of the Divine Word		Overseas mission
Mission Society of the Philippines		Overseas Mission, pastoral care
Missionaries of Charity		Overseas mission, pastoral care
Missionaries of the Faith		Overseas mission, pastoral care
Salesians of Don Bosco		Education, youth ministry
Society of Christ		Pastoral ministry

Source: *Australasian Catholic Directory*, 1860-1960/61; *Official Yearbook of the Catholic Church in Australia and New Zealand*, 1961/61-1975; <https://www.catholic.org.nz/find-us/organisations/>

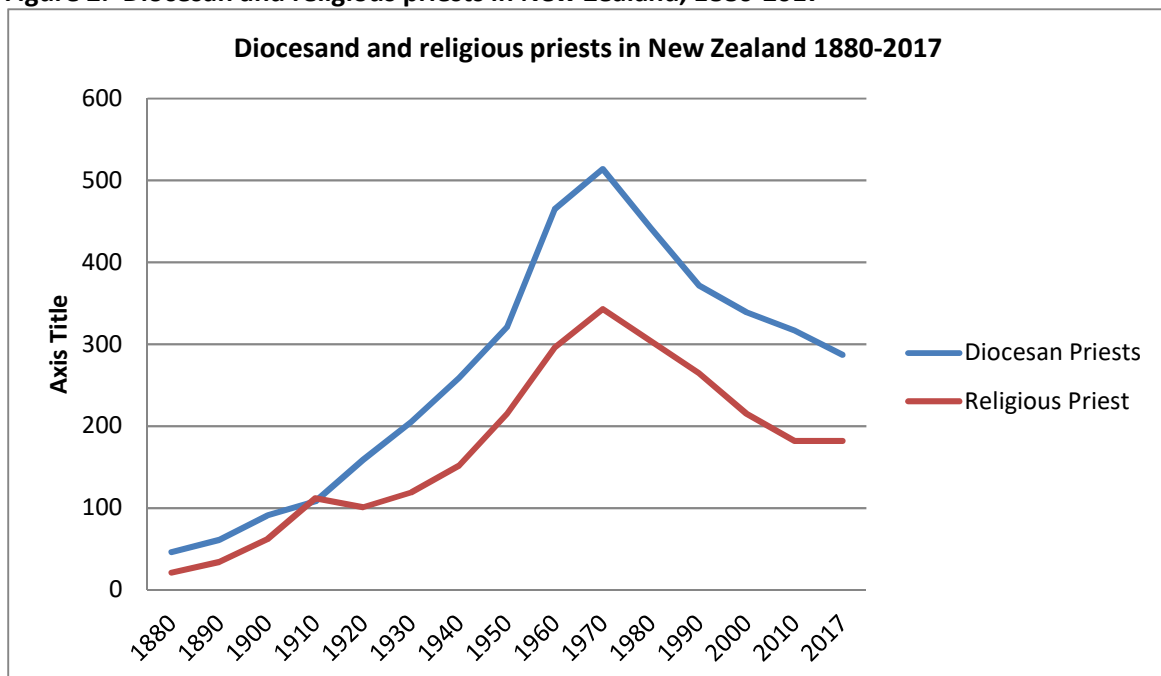


There have been few Māori priests ordained to date. The first was Wiremu Te Awhitu, ordained in 1944 and the first Māori bishop was Max Mariu, ordained in 1988. Other Maoris ordained to the priesthood include Henare Arekatera Tete (ordained 1962), Karaitiana King (1969) and Peter Tipene (1994). Why so few Māori were ordained to the priesthood is not clear, and deserves examination. Prior to the Māori wars many Māori had embraced the Catholic faith, but by 1870 few Māori Catholics remained.

Priest numbers have varied significantly since 1842 when the New Zealand Vicariate was established, and accurate public data is only readily available for the periods 1880–1974 and 1999–2017.

Over the years many religious congregations of priests made foundations in the New Zealand dioceses and Table 4 shows those did so up to 2019. Some congregations (Jesuits, Vincentians, Picpus Fathers) also withdrew after a period.

**Figure 2. Diocesan and religious priests in New Zealand, 1880-2017**



Source: *Australasian Catholic Directory*, 1860-1960/61; *Official Yearbook of the Catholic Church in Australia and New Zealand*, 1961/61-1975; *Statistical Yearbook of the Church*, 1993-2017

Both diocesan and religious priest numbers peaked in the late 1970s (Figure 2), but significantly reduced over the following 40 years. Numbers would have reduced further but for the arrival and recruitment of ordained priests (and seminarians) from overseas churches over the past 25 years.

**Strategy 5: establish schools for boys and girls to provide secular and religious education**

The strategy to establish Catholic schools was implemented very early in New Zealand. When the Irish Sisters of Mercy arrived in Auckland in early 1851, several schools had already been established and had 60 students. The Sisters took over St Patrick’s (for girls) and established St Anne’s for Māori girls. By the end of the year there were 140 students. In 1852 there were 3 schools - for infants, grown girls, and a select or benefit school – as well as a house-school for ‘native girls’. Some 200

children were under instruction. The French Sisters of Our Lady of the Missions who arrived in the 1880s dedicated their efforts principally to Māori children.

Other religious orders of brothers (cf. Table 5) and sisters (cf. Table 6) followed, and by 1900 there were 103 Catholic primary schools and 44 secondary schools (22 providing board) educating 11,867 boys and girls.<sup>33</sup>

**Table 5. Foundations of male lay religious congregations in New Zealand, 1883-2019**

Congregation	Foundations made	Special ministries
Marist Brothers of the Schools	Christchurch, 1883; Wellington, 1885; Auckland, 1885; Dunedin, 1897	Education, novitiate (Timaru)
Christian Brothers	Dunedin, 1976; Auckland, 1938; Christchurch, 1961	Education, juniorate (1962)
De La Salle Brothers	Wellington, 1953; Auckland, 1953	Education
St John of God Brothers	Christchurch, ?; Wellington, ?	Disability, youth & social services

Source: *Australasian Catholic Directories, 1860-1960/61; Official Yearbook of the Catholic Church in Australia and New Zealand, 1961/61-1975*

While most of the early religious were recruited from overseas, particularly Ireland, some male and female religious congregations established juniorates and novitiates in New Zealand for the purpose of recruiting and training local candidates. Some of the boys and girls secondary schools also served as recruiting grounds for local vocations to the religious congregations. In some instances they were regarded as quasi minor seminaries.

By 1960 there were almost 2500 religious sisters in New Zealand, mostly working in schools and health and welfare institutions. Religious brothers, mostly teaching in schools, peaked at 350 around 1970 (cf. Figure 3). In that year, there were 281 Catholic primary schools and 60 secondary schools, educating 57,789 students.<sup>34</sup> Since the 1970s the numbers of both male and particularly female religious in New Zealand have decreased dramatically. At end-2017, religious brothers numbered just 116 and religious sisters 669, with most now elderly and no longer in active ministry.

During the past 20 years, there have been allegations of sexual abuse of students in Catholic schools by religious and lay teachers, including abuse at the St John of God Marylands School in Christchurch during the 1970s.<sup>35</sup> Some alleged abusers have been found guilty and sentenced to prison terms.<sup>36</sup>

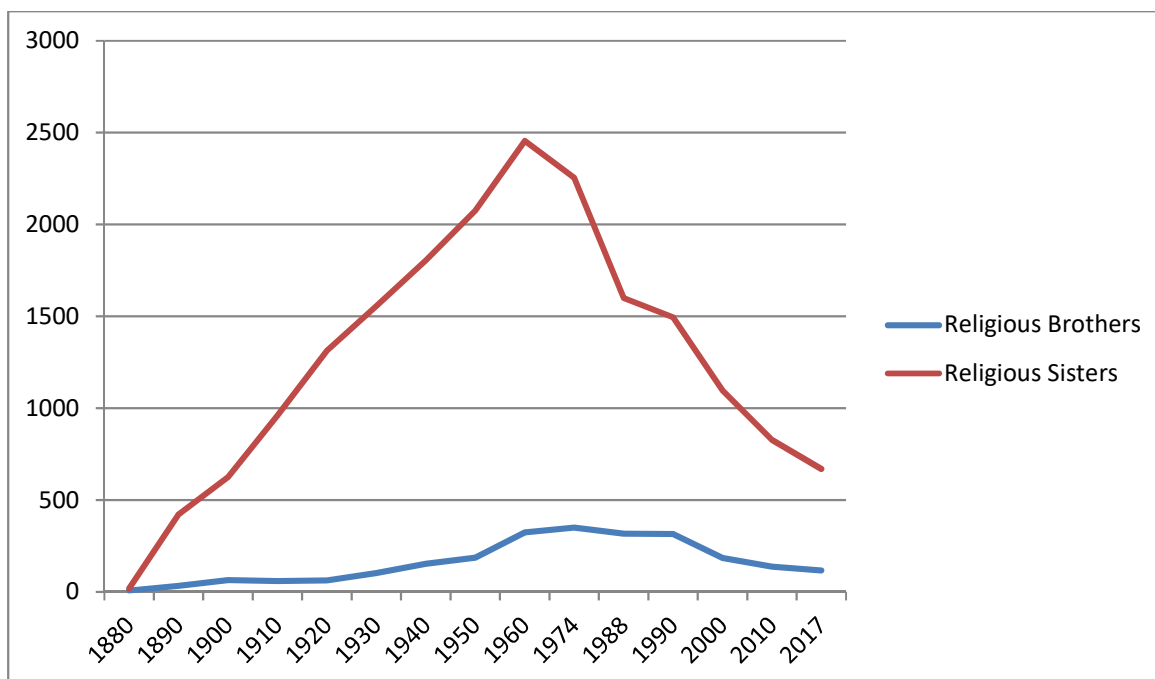
**Figure 3. Religious Brothers and Sisters in New Zealand, 1880-2017**

<sup>33</sup> *Australasian Catholic Directory, 1901*

<sup>34</sup> *Australasian Catholic Directory, 1961*

<sup>35</sup> [https://en.wikipedia.org/wiki/Sexual\\_abuse\\_scandal\\_at\\_Marylands\\_School,\\_Christchurch](https://en.wikipedia.org/wiki/Sexual_abuse_scandal_at_Marylands_School,_Christchurch)

<sup>36</sup> [https://en.wikipedia.org/wiki/Catholic\\_Church\\_sexual\\_abuse\\_cases\\_in\\_New\\_Zealand](https://en.wikipedia.org/wiki/Catholic_Church_sexual_abuse_cases_in_New_Zealand)



Source: *Australasian Catholic Directories*, 1860-1960/61; *Official Yearbook of the Catholic Church in Australia and New Zealand*, 1961/61-1975; *Annuarium Statisticum Ecclesiae (Statistical Yearbook of the Church)*, 1999-2017

### Strategy 6: engage in works of charity and establish charitable institutions where needed

This strategy was actively implemented in the early years of the New Zealand mission. Within a year of their arrival in 1851 the Irish Sisters of Mercy had opened an orphanage for 18 female children. By 1865 they were caring for almost 50 orphans or destitute children. As a result of the Māori wars during the 1860s the number of poor schools and orphanages increased.

Until 1874 most Catholic orphans had been sent to the Government orphanage at government expense and raised as Protestants. The Supreme Court then decided that all Catholic orphans could be sent to the orphanage of the Sisters of Mercy, but without any government subsidy. Two orphanages for poor Catholic children were established at Nelson in the 1870s, one for boys and the other for girls from all over New Zealand, and were supported by the bishops of Wellington, Auckland and Dunedin.

Fr Garin established the Industrial Reform School (St Mary's Orphanage) at Stoke in Nelson (Diocese of Wellington) in 1874. It was run by the Marist Brothers and was educating 180 boys aged 7-16 years, some criminal and others indigent. There were two orphanages operating in 1880 and by 1900 a further 8 charitable institutions. By 1940 the official directories list 15 charitable institutions and 8 orphanages.

Table 6 shows 12 of the Catholic orphanages and other charitable institutions providing care for boys and girls in New Zealand in 1940, and the religious congregations in charge of those institutions. Five of these were still operating in 1970 with another two added.

**Table 6. Catholic residential care institutions in New Zealand, 1940 and 1970**

Diocese	Institution	Congregation responsible	Years (inmates)
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Wellington	St Joseph's Orphanage Home for Boys, Lower Hutt St Mary' Orphanage, Nelson O'Connor Home for Orphans 'Sunnybank' Boys Rural School	Sisters of Mercy Sisters of Mercy Sisters of OL of Missions Sisters of Mercy Sisters of OL of Missions	1940 (34); 1970 1940 ((50) 1940 (80) 1940 (29 incl. aged) 1970
Auckland	Boys Orphanage, Takapuna Girls Orphanage, Howick Magdalen, Waikowai	Sisters of Mercy Sisters of Mercy Good Shepherd Sisters	1940 (70); 1970 1940 (72); 1970 1940 (58); 1970
Christchurch	Magdalen Orphanage St Joseph's Home, Middleton Orphanage for Girls, Halswell School Farm for Orphan Boys	Good Shepherd Sisters Sisters of Nazareth Sisters of Nazareth n/a	1940 (107) 1940 (123 boys); 1970 1970 (n/a) 1940 (just opened)
Dunedin	Girls Orphanage Boys Orphanage	Sisters of Mercy Sisters of Mercy	1940 (n/a) 1940 (n/a)

Source: *Australasian Catholic Directory*, 1941 (data is for 1940) and 1971 (data for 1970)

Allegations of abuse at several of these institutions have been widely reported. The most notorious was the Stoke Industrial School (St Mary's Orphanage), the subject of a Royal Commission in 1900 over poor conditions, mistreatment and alleged child sexual exploitation.<sup>37</sup> Another was the alleged abuse of boys and girls at two institutions of the Sisters of Nazareth in Christchurch.<sup>38</sup>

**Table 7. Foundations of female lay religious congregations in New Zealand, 1883-2019**

Congregation	Foundations made	Special ministries
Sisters of Mercy	Auckland, 1850; Wellington, 1850; Christchurch, 1878; Dunedin, 1897	Education, orphans, Māori, care of sick, pastoral
Sisters of OL of Missions	Auckland, 1884; Wellington, 1884; Christchurch, 1884	Orphans
Sisters of St Joseph of Nazareth	Wellington, 1800 : Christchurch, 1905: Auckland, 1961	Care for orphans and elderly,
Sisters of St Joseph of Sacred Heart	Christchurch, 1883; Wellington, 1884; Auckland, 1884; Dunedin, 1898	Education
Daughters of OL of Compassion (NZ origin)	Wellington, 1892; Auckland, 1933; Christchurch, 1951	Care of sick, elderly & needy, pastoral, education, chaplaincy
Sisters of OL of Nazareth	Auckland, 1955; Christchurch 1956	Care of children
Sisters of St Brigid	Wellington, ? ; Auckland, 1952	Education

<sup>37</sup> The two Marists accused of sexual crimes were acquitted, but the Marists were forced to leave the school.  
[https://en.wikipedia.org/wiki/Stoke\\_Industrial\\_School](https://en.wikipedia.org/wiki/Stoke_Industrial_School)

<sup>38</sup> [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=3534051](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=3534051)

Religious of Sacred Heart	Wellington, 1905; Auckland, 1909; Christchurch, 1959	Education
Nursing Sisters of Little Company of Mary	Wellington, 1927; Christchurch, 1924; Dunedin, 1958	Health
Missionary Sisters of Society of Mary	Wellington, ? ; Christchurch, 1949; Auckland, 1951	Overseas missions; health
Little Sisters of the Poor	Auckland, 1887; Wellington, ?; Dunedin, 1904	Care of the Aged
Marist Sisters	Auckland, 1927	
Sisters of Good Shepherd	Christchurch, 1886; Auckland, 1931, Wellington, 1945	Care of women & children in need, Magdalens
Sisters of St Dominic	Dunedin, 1871; Auckland, 1931; Wellington ?	Education
Sisters of St Joseph of Cluny	Auckland, 1940; Christchurch, 1948; Dunedin, 1949	Support in seminaries
Carmelite Sisters	Christchurch, 1933; Auckland, 1937	Prayer & contemplation
Sisters of St Peter Claver	Wellington, ?	Overseas missions
Sisters of OL of Nazareth	Auckland, 1955; Christchurch 1905	
Presentation Sisters	Wellington, 1951; Dunedin, 1954	Education
Religious of the Cenacle	Auckland, 1953; Wellington, 1954	
Little Sisters of the Assumption	Dunedin, 1955; Wellington, 1957	
Congregation of Jesus and Mary	Christchurch, 1961; Wellington, 1967	
Sisters of the Holy Faith	Auckland, 1958; Christchurch, ?	
Franciscan Sisters of the Divine Motherhood	Auckland, 1966	

Source: *Australasian Catholic Directory*, 1860-1960/61; *Official Yearbook of the Catholic Church in Australia and New Zealand*, 1961/61-1975

### Evangelization of the Māoris

Bishop Pompallier and the first Marist missionaries made the evangelization of the Māori people their first priority. By 1850, just 11 years after the arrival of the Catholic missionaries, over 5000 Māori men and women had become neophytes, and by 1853 some 3500 had been baptized Catholics. The first 8 Irish Sisters of Mercy joined the mission in 1850 to provide education to both the Māoris and Europeans, and Irish secular priests also began to arrive around the same time. Outstanding among them was Fr James McDonald who carried on a special ministry to the Māori people for 40 years. However, Bishop Thomas Croke, who succeeded Pompallier as Bishop of Auckland in 1870, said that on his arrival in 1863: “there were 1500 [Māori Catholics before]; and [now] I found only one, and he was living with the priest.”<sup>39</sup>

The Marists made special efforts among the Māoris at Hawke’s Bay and the Meanee College for Māori and European children was founded at Napier. Mill Hill missionary and the Sister of St Joseph,

<sup>39</sup> Moran, Patrick, *History of the Catholic Church in Australasia*, Coffee & Co. Sydney, 1896

who arrived during the administration of Bishop Luck, also made the evangelization of the Māoris their special mission, and by 1891 some 4000 in the Auckland diocese were Catholics.

### Strategy 8: Printing press

At early as 1840 the Marists had established a printing press at their mission house in Kororareka and had printed a short catechism and prayer book in the Māori language for distribution among the Māoris.

## Supplements

### 1. Additional statistical data for the Catholic Church in New Zealand

**Table 8: Demographic and ecclesiastical data for the Catholic Church in New Zealand, 1836-2016**

Year	Total Popul.	Catholic Popul./ % total Popul.	Vicariates/ Dioceses/ Ordinariates/ Province	District / Parish <sup>1</sup>	Priests: Dioce./ Relig.	Relig Sist-ers	Relig Bro-thers	Charit. Instit-utions/Orphanages <sup>2</sup>	Catholic Schools: Primary/ Second.	Catholic Students
1842	5000 <sup>9</sup>	500 <sup>9</sup>	1 (VA)			0				
1853	91,450 <sup>8</sup>	3500	2 dioceses	6	3/3	6	4	1	3	240
1869	218,668 <sup>12</sup>		3 dioceses			16				
1885	613,900	80,000 (13%)	3 dioceses	55	(79 D+R)				(65 P+S)	
1887	378,482 <sup>13</sup>		<b>Province of Wellington</b> 4 dioceses							
1890/91	626,658 <sup>10</sup>	87,272 <sup>11</sup>	4 dioceses	72	61/34	422	34	6	87/38	9,452
1895	743,214 <sup>14</sup>	87,430/ 11.8%	4 dioceses	79	60/52	461	52	8	97/40	11,144
1900	815,862 <sup>15</sup>	92,025/ 11.3%	4 dioceses	86	91/62	625	64	10	103/44	11,867
1910	1070910 <sup>16</sup>	130,376/ 12.2%	4 dioceses	113	108/112	960	59	17	120/50	10,190
1920	1099449 <sup>17</sup>	152,008/ 13.8%	4 dioceses	135	159/101	1314	63	20	144/66	20,452
1930	1506800 <sup>18</sup>	182,714/ 12.1%	4 diocese	155	205/119	1557	102	22	171/49	26,528
1940	1600000 (est)	200,487/ 12.5%	4 dioceses	166	259/152	1805	154	15/8	152/64	29,952
1950	1708833	214,287/ 13%	4 dioceses	198	321/215	2075	187	12/10	202/83	33,302
1960	2372000	313,106/ 13.2%	4 dioceses	261	455/296	2456	325	24/8	221/60	57,789
1970	2811000	422,128 15.0%	4 dioceses	281	514/343	2560	381	26/7 <sup>4</sup>	271/75	62,941
1974	3129383	446,937 15.8%	6 dioceses <sup>4</sup> 1 ordinariate	283	499/309	2255	350	28/9	333/79	65,047
1990	3266733	467,000/ 14.4%	6 dioceses 1 ordinariate	277	385/316	1496	316			
2001	3916200	485,637/ 12.4%	6 dioceses 1 ordinariate	270	324/210	1071	184			
2006	4209100	508,437/ 12.1%	6 dioceses 1 ordinariate	270	303/201	915	154			
2013	4471500	492,105/ 11.0%	6 dioceses 1 ordinariate	264	302/186	723	112			



2017/ 18	4,699,75 5 (2018)	471,031/ 10.02% (2018)	6 dioceses 1 ordinariate	202 (2017)	287/182 (2017)	669 (2017)	116 (2017)			
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Source: *Australasian Catholic Directory* (1894-1960/61); *The Official Year Book of the Catholic Church of Australasia* (1961/62); *The Official Year Book of the Catholic Church of Australia, New Zealand and Oceania* (1962/63-1968/69); *The Official Yearbook of the Catholic Church of Australia & Papua-New Guinea, New Zealand & The Pacific Islands* (1969/70-); *The Official Directory of the Catholic Church in Australia and New Zealand* (1974-1975); Census data: 1871-1916 [http://archive.stats.govt.nz/browse\\_for\\_stats/snapshots-of-nz/digitised-collections/census-collection.aspx](http://archive.stats.govt.nz/browse_for_stats/snapshots-of-nz/digitised-collections/census-collection.aspx). *Annuario Statisticum Ecclesiae*, 1990-2017. Notes: 1. Until 1928 Parishes were listed as 'Districts'. 2. From 1965 Orphanages were listed as 'Children's Homes'. 3. After 1975 the statistics for New Zealand are not given in the Australian directories. 4. Data is for 4 dioceses only. 5. In 1990 there was 1 permanent deacon. 6. In 2010 there were 25 permanent deacons. 7. In 2016 there were 39 permanent deacons. 8. At the end of 1853 the estimated total population of New Zealand is 91,450:61,850 Māori and 29,600 non-Māori. 9. These figures are only the European population. 10. This figure, from the 1891 Census is for Europeans only. 11. This figure is from the 1891 Census, 12. This figure is from the 1867 Census, which does not include "Aboriginal Natives, Military and their families.". 13. This figure is from 1886 Census and excludes the Māori people. 14. Figure from 1896 Census which includes Māori, Chinese and Half-caste persons. 15. This figure is from the 1901 Census, which includes Māori, Chinese and Half-caste persons. 16. This figure is from the 1911 Census and includes Māori, Chinese and Half-caste persons. 17. This figure is from the 1916 Census and includes Māori, Chinese and Half-caste persons. 18. [http://www.stats.govt.nz/browse\\_for\\_stats/population/estimates\\_and\\_projections/historical-population-tables.aspx](http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/historical-population-tables.aspx)

**Table 9: Statistics for the dioceses of the Catholic Church in New Zealand in 1950**

Diocese	Est. Year	Catholic Populat'n	Parishes	Priests: Dio/Rel	Relig. Broth.	Relig. Sisters	Orphan-ages	Schools/ Students
<b>Auckland</b>	1848	82,000	79	118/45	67	652	2	63/10,720
<b>Wellington</b>	1848	73,725	54	101/112	67	763	3	90/10,558
<b>Dunedin</b>	1869	26,793	32	53/9	39	291	2	30/4,300
<b>Christchurch</b>	1887	31,769	32	49/19	23	369	3	49/6,724
<b>Totals</b>		<b>214,287</b>	<b>198</b>	<b>321/215</b>	<b>187</b>	<b>2,075</b>	<b>10</b>	<b>202/32,302</b>

Source: *Australasian Catholic Directory for 1951* (data for 1950). Notes: 1. In 1950 there were 4 seminaries in New Zealand with a total of 194 seminarians: 2 seminaries in Wellington with 42 seminarians; 1 seminary in Christchurch with 72 seminarians; and 1 seminary in Dunedin with 80 seminarians. 2. The total population of New Zealand in 1950 was 1,908,310, with Catholics constituting 11.2 per cent.

**Table 10: Statistics for the dioceses of the Catholic Church in New Zealand in 1974**

Diocese	Est. Year	Catholic Populat'n	Parishes	Priests: Dio/Rel	Relig. Broth.	Relig. Sisters	Children's Homes	Schools/ Students
<b>Auckland</b>	1848	190,630	105	164/45	141	707	2	116/24,887
<b>Wellington</b>	1848	153,157	92	169/192	112	756	3	116/23,007
<b>Dunedin</b>	1869	41,988	37	76/19	49	319	1	40/7,313
<b>Christchurch</b>	1887	61,162	49	90/53	48	473	3	61/9,840
<b>Totals</b>		<b>446,937</b>	<b>283</b>	<b>499/309</b>	<b>350</b>	<b>2,255</b>	<b>9</b>	<b>333/65,047</b>

Source: *The Official Directory of the Catholic Church in Australia and New Zealand, 1975* (data for 1974). Notes: 1. The 1975 edition of the Official Directory was the last to publish data on the Catholic Church in New Zealand. 2. Total population of New Zealand in 1975 was 3,083,000, with Catholics constituting 14.5 per cent. 3. In 1975 there were 3 seminaries with 168 seminarians: 1 in Wellington with 76 students; 1 in Christchurch with 39 seminarians; and 1 in Dunedin with 53 students.

## 2. Some additional notes

### Religion in New Zealand – Census and other data

- Catholics constituted the largest faith group in NZ in the 2013 and 2018 Censuses.
- Several of the Eastern Catholic churches are present in NZ, the largest being the Maronite, Melkite, and Ukrainian churches. The eparchies and eparchies are based in Australia.
- There are 45 religious congregations with foundations in NZ. Local vocations are few, and half the candidates are from overseas.
- 2013 Census data: <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-culture-identity/religion.aspx>
- Research: Dr Barry McDonald, *Will New Zealand still be predominantly 'Christian' in 2011? An analysis of the 2006 Census religion question.*
- Catholic Church official website: <https://www.catholic.org.nz/>
- Catholic Population statistics (official) : <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-culture-identity/religion.aspx> ; <https://teara.govt.nz/en/interactive/29307/number-of-catholics-in-new-zealand> (interactive graph)
- Comparative data for Australia and New Zealand for priests (diocesan and religious) and religious brothers and sisters, 1890-2017

**Table 11. Comparative numbers of diocesan and religious priests and religious brothers and sisters in Australia and New Zealand, 1890-2017**

Year	Aust. D Priest	NZ D Priest	Aust. R Priest	NZ R Priest	Aust. R Bros	NZ R Bros	Aust. R Sister	NZ R Sister
1890	469	61	115	34	229	34	2086	422
1900	621	91	195	62	388	64	3622	625
1910	747	108	255	112	505	59	5500	960
1920	1026	159	291	101	601	63	6768	1314
1930	1173	205	570	119	943	102	8793	1557
1940	1501	259	578	152	1118	154	10335	1805
1950	1699	321	872	215	1532	187	11245	2075
1960	2163	465	1209	296	2050	325	13094	<b>2456</b>
1970	<b>2410</b>	<b>514</b>	1387	<b>343</b>	<b>2376</b>	<b>350</b>	<b>13474</b>	2255
1980	2409	442	<b>1396</b>	304	2034	317	12120	1599
1990	2040	372	1301	265	1301	316	8981	1496
2000	2023	339	1233	215	1189	184	7319	1096
2010	1917	317	1153	182	918	138	5327	828
2017	1904	287	1063	182	689	116	4166	669

Source: *Australasian Catholic Directory*, 1860-1960/61; *Official Yearbook of the Catholic Church in Australia and New Zealand*, 1961/61-1975; *Statistical Yearbook of the Church*, 1993-2017. Note: Underlined and bold numbers in cells show the decades for peak numbers. The peak numbers for NZ

as a percentage of the Australian peak numbers were: diocesan priests (21.3%), religious priests (24.6%), religious brothers (14.7%), and religious sisters (18.2%).

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### **Catholic Church data and official directories for the Catholic Church in New Zealand**

- Data on the Catholic Church in New Zealand was published on a regular basis by the official *Australasian Catholic Directory* from 1841 (*1<sup>st</sup> Australasian Catholic Directory*) to 1960/61 and from 1961/62 by *The Official Year Book of the Catholic Church in Australia and New Zealand* up until 1975. After 1975 no data on New Zealand was included.
- No official directory for the Church in Australia was published from 1976-1980 (inclusive), and official directories after 1980 were only published for 1981/82, 1983/84, 1985/86, 1988/89, 1990/91 and 1992/93. Regular annual publication resumed from 1994, initially for the calendar year (1994-2004), and thereafter for the financial year (2004/2005 to latest edition 2019/2020). The data published is always for the previous year.
- After 1975 the only comprehensive data for New Zealand (all dioceses combined) is to be found in the *Annuarium Statisticum Ecclesiae* published annually by the Vatican Secretariat of State. We had available volumes with data for the years 1988 to 2017.

### **History of Catholic Church in NZ**

- There are several online sites with potted histories: <https://teara.govt.nz/en/catholic-church/sources> (most comprehensive and provides LINKS to other sites on p. 7) ; <https://www.catholic.org.nz/about-us/history/> ; <https://www.faithcentral.org.nz/wp-content/uploads/2013/03/historycatholic.pdf> ; <https://www.noted.co.nz/currently/social-issues/the-second-coming-why-catholicism-is-on-the-rise-in-nz/> (overview of Catholicism and particular Catholics in today's NZ society)
- Moran, Patrick, *History of the Catholic Church in Australia and New Zealand*, Coffee & Co., Sydney, 1896

### **Catholic Church guidelines, policies and professional standards on child sexual abuse**

- The 2017 National Policies and Guidelines of the Catholic Church in New Zealand for safeguarding children:  
<https://drive.google.com/file/d/0B0HFqcpZ8YgQVHBzUk1ZMnhaU2IEaGtMa3h4WEdxS2c4cnlZ/view>
- Australian Catholic Centre for Professional Standards:  
<https://www.catholic.org.au/organisations-in-formal-liaison-with-the-acbc/national-committee-for-professional-standards>
- NZ Bishops' Pastoral Letter (2002) on abuse: <https://www.catholic.org.nz/about-us/bishops-statements/pastoral-letter/>

### **Redress for Survivors**

- Australian Royal Commission :  
[https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final\\_report\\_-\\_redress\\_and\\_civil\\_litigation.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf) (search with 'Catholic Church')

**Peter Wilkinson**  
**29 September 2019**

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## APPENDIX SEVEN

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