

SPEECH

WA Bar Association

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The Catholic Church has been the single largest institutional grouping to have perpetrated sexual abuse on children over the past half century.

In around 38 percent of the more than 7,500 private meetings between individual survivors and Royal Commissioners over the past almost five years, a Catholic institution was named as the place where the survivor was abused.

If this was to have occurred in any other institution it is hard to imagine that it could continue to operate.

Official data released by the Commission earlier this year showed up to 1,880 individuals within the Church had allegations of abuse laid against them in the six decades between 1950 and 2010.

This breaks down into perpetration rates of 7 per cent of all priests, and up to 40 percent in some male religious orders.

In all it represents 4,445 individuals claiming to have been abused by a priest, brother or worker within the Church.

And to compound this, it is now commonly accepted that only one in six adults ever reveal to authorities the sexual abuse they experienced as a child.

Given this we can safely assume that the actual incidence of child sexual abuse by clerics and others in the Catholic Church is far higher.

Devastating as these figures are, the very fact that the Church held them back from public scrutiny and has maintained a stony silence on the extent of abuse within its institutions speaks volumes for its entrenched self-protection.

It indicates the almost obsessive dependency on risk management to safeguard the reputation and financial interests.

Into this culture has intruded the media and victim advocacy groups, some of those being plaintiff law firms.

Together they have shaken loose the truth. It has been a torrid and vigorously fought affair over many years.

For brevity's sake, may I simply say that the Royal Commission process has opened the lid on an institution finely honed in the art of survival....

....an institution in which many of its leaders and adherents have acted as if they are, if not above the law, then certainly apart from it.

When the Truth Justice and Healing Council, of which I am the CEO, was set up by the Church leadership in late 2012, just ahead of the Royal Commission's first sitting, we were given a clear brief.

The Council was to co-operate fully with the Commission.

We had full license to interpret that co-operation as we thought and we were given complete functional autonomy in decision making over legal representation, public relations and policy formulation.

The Council comprised competent lay experts across the law, psychiatry, social work, victim advocacy, public administration, church life and survivor experience.

We have been very ably led by the Honourable Justice Neville Owen who replaced the deceased the Honourable Barry O'Keefe.

From the very start, even before we chose a firm of solicitors and then senior counsel, the philosophy and approach of the Council needed to be clear.

For far too long the Catholic Church had adopted a defensive, hyper-sensitive approach to this scandal.

Its defenders wanted to blame the media for exaggerating the issue or its secular opponents for being expedient with how this scandal could weaken the influence of the Church.

Our Council saw this as folly.

Unless the Church shed its propensity to rationalise its history and to contextualise this scandal it could never expect the community to perceive that its leaders had really understood the issues and the responsibilities that needed to be taken.

Put simply this Royal Commission was about revealing what has happened.

Its aim was to uncover how the Catholic Church and other institutions dealt with abuse cases. It was paramount for the Truth Justice and Healing Council to do everything possible to assist that outcome.

That in effect saw us, to a large extent, favour the interests of victims and survivors ahead of the institutional concerns of the Church. To fall back on that old approach would serve absolutely no one well.

This was not a time for the might of the Catholic Church to seek to drown out the voices of victims.

It was not the time for the Church to use legal tactics to squash the stories of victims...

..... and it certainly was not the time for promoting the contribution of the Church in society when so much damage was yet to be revealed.

I appreciate that this is a difficult brief for lawyers trained to defend the legal rights of their clients. But to their credit our solicitors, Gilbert and Tobin, willingly co-operated in this approach.

This played out in very practical ways.

Firstly, we decided to make void any confidentiality agreements that existed in past settlement cases. Victims needed to be free to tell their story.

We also encouraged Church Authorities to lay aside Deeds of Release and revisit past settlements to ascertain their fairness and to make adjustments accordingly.

As an example, the Christian Brothers established a formal process whereby, hundreds of past settlements have been independently reviewed and extra payments made.

Secondly, we established a rock-solid commitment not to cross examine any victim after they had told their story to the Commission.

Some have expressed surprise at this decision but we were adamant that this was a time to, in the words of chief commissioner, Justice Peter McClellan, bear witness to what has occurred.

Thirdly, particular individuals within the Catholic Church who considered that their personal interests would not be best served through our approach, were encouraged to have separate legal representation.

It became quite acute where we considered the actions of some individuals to be inconsistent with the Council's policy position. It would be up to their legal teams to argue their case.

This was an important policy position of the Council and sometimes a difficult decision for the people involved, effectively cutting them loose from the overarching representation of the Church before the Commission.

Our Council in effect co-ordinated the representational interests of 33 dioceses and 189 religious orders.

In practical terms, we became the closest thing yet to a central office for the Catholic Church in Australia.

We have provided hundreds of witness statements to the Commission, we have delivered hundreds of thousands of documents, we have briefed and prepared hundreds of witnesses.

The work undertaken by the Council and our lawyers is arguably part of one of the biggest and longest legal processes in any Australian Royal Commission or Inquiry.

To achieve this we needed to be in close working contact with those legal advisors who are normally engaged on behalf of the various Church authorities.

At times this became tricky but I must say the leaders of the Church Authorities consistently sought to work as one with the Council and to support our public position.

For those who have any appreciation of the culture of the Catholic Church this level of co-operation is unprecedented.

The Commission began its proceedings examining how particular cases were handled by the institutions. By the end of its third year the Commission was looking at why the scandal was handled the way it was.

In other words, they had moved from the incidence of abuse in institutions to the culture that mishandled that abuse.

For the Catholic Church that meant confronting how power was exercised and sex understood within the Church.

It will come as no surprise to you that not only is the Catholic Church very familiar with power politics, it is also ruthless in the exercise of internal power when it so chooses.

During the height of the child sexual abuse scandal this was played out with brutal efficiency.

Victims were simply not believed, nor were they given the opportunity to tell their story.

The Church used its might and political savvy to distance victims and their families, to discredit their claims and to silence their complaints.

Church leaders used inertia as a management tool hoping to wait out survivors.

In earlier times the civic connections of the Church enabled scandalous stories to be buried and for hapless victims to be ostracised in their communities.

This was once the stuff of movies and novels. Today it is the evidence at the Royal Commission.

There can be no mistake - the culture of the Catholic Church significantly contributed to the extent of the abuse and the way in which it was handled.

Experts have identified the all-male celibate culture as being a potent contributor to a closed, self-serving ethos where loyalty and compliance are contributing elements for personal advancement and success.

Alongside this self-serving and institutionally protective culture were the lay advisors. Often they had legal and financial training.

Loyal sons of the Church these, for the most part, men would provide the necessary legal and risk management advice that assisted the institution to dominate survivors and effectively silence their voices.

Whether it was through legal threats, or more subtle, persuasive means, bishops and their advisors ensured that the interests of the Church were always protected.

The irony of this has not been lost.

With all the attempts to protect the good name of the Church has come the biggest scandal and corrosion of its reputation both here in Australia and in many other places around the world.

Put bluntly, Church leaders during this particularly toxic period in our history lost any sense of moral leadership.

They meekly adopted the approach that any other organisation's management would pursue when under threat.

They failed to personify the very nature of the Church and rather, chose to handle the abuse cases as if they were any organisation facing the same crisis.

Gone was any tangible sign of compassion for victims, outrage at the abuse itself and contrition for the actions of one of their own.

Gone too was the resolve to rid the Church of perpetrators and to systematically remedy the culture and processes that had so badly handled the abuse.

Instead the organisation closed ranks and hid. I paint a grim picture.

So, what of the present? I think it's important to make a couple of relevant points about the contemporary Church.

The Royal Commission has predominantly focused on the decades of abuse and cover-up prior to the bishops and religious leaders actively putting in place more professional and transparent processes to handle abuse allegations post the start of the 1990s.

The risk is that the Commission, and the community in general, incorrectly assume that the operation and management of the 1960s, 70s and 80s that allowed for the cover-ups and the protection of perpetrators is the same today as it was then.

The facts speak otherwise.

Firstly, the Commission's own data reveals that the incidence of clerical abuse of children has effectively disappeared.

This is as much a result of bishops and religious leader's instigating a culture of prevention, detection and protection of children in all church services and settings as it is in the very real decline in the numbers of priests and brothers.

And while there is never room for complacency, I think it can safely be said that Catholic schools have never been safer, youth services and activities are vigilantly supervised and all planned parish activities make child safety paramount.

Since the 1990s the Catholic Church across its many social manifestations has deployed considerable resources in training personnel and volunteers to create child safe environments.

Despite the public commentary to the contrary I have seen a significant shift in the attitude and approach by Church leaders to both the extent and causes of clerical sexual abuse of children which has resulted in a completely different understanding of what protecting children actually means.

I think it is fair to say many of the redress and pastoral response services now operating in the Catholic Church would be part of best practice in Australia.

That said there are still areas of resistance and lack of transparency within the governance and management of the church that require reform if we are to be able to legitimately claim to be engaged in a contemporary environment.

This is vital, no more so than in the area of redress for abuse survivors.

Since the start of the Commission our Council has insisted that the days of the Church investigating itself are over.

There's been too much in-house management of complaints and their resolution, including reparation.

Whether fairly or not, the wider community perceives a conflict of interest when the Church solely determines the payments to survivors.

For that reason, we have long called for a national redress scheme where victims can have their reparations determined independently of the Church.

Such a scheme needs to at best be 'legal lite'. There's already been enough trauma. Victims don't need yet another adversarial process with onerous evidentiary burdens of proof.

For those who prefer the rigours of civil litigation there should be a separate and distinct pathway from that of the redress scheme.

As we meet this evening, the Commonwealth, through Social Services Minister Christian Porter, is preparing to introduce a redress scheme to the Federal Parliament that has the potential to cover all survivors across the country.

It is the type of scheme that the Catholic Church leadership has called for.

To be ultimately successful for all survivors, each state and territory government needs to opt to be part of the scheme. There is the potential for this to occur.

The question is whether there is the resolve.

Strangely we as a community find ourselves at a turning point.

After almost five years of a Royal Commission we remain uncertain as to the political will of our elected leaders.

It is too easy to reduce the issue to money. This Royal Commission has revealed the heavy personal and social cost of the abuse of children.

Costs of lost lives and opportunities diminished. Costs of personal depression and despair, workplace dysfunction, decreased productivity and relationship blight. Costs of institutional distrust and the corrosion of social capital.

This wound runs deep in our community.

Once again it will require those who advise on these matters to think broadly and with a less risk adverse mentality.

The answer doesn't lie in how much the scheme will cost but in what it will take to justly mend the damage that has been done.

The federal scheme as currently designed will see compensation determined independently, with the institution responsible for the abuse paying the reparations.

This is truly a time for atonement and our political leaders need to demonstrate that they not only understand that but that they can carry us all through to days where reconciliation and solidarity are once again part of the fabric of our community.

In addition to working hard to promote the Commission's redress proposal the Truth Justice and Healing Council has also driven a number of other significant reforms to the way Church authorities approach civil claims.

These include requiring an order or diocese facing a civil claim of child sexual abuse to help identify an entity to sue, doing away with what is often referred to as 'The Ellis Defence'.

We have developed new litigation guidelines specifically for church authorities which are designed to make the court process just a little easier for plaintiffs.

We have also developed a new independent church entity – Catholic Professional Standards Limited – which will set protection standards for children and vulnerable adults, monitor these standards and then publicly report on how well or otherwise they are complied with.

We have put in place guidelines for revisiting past survivor settlements made both through internal church processes and at common law.

Using the guidelines, claims and payments which were considered demonstratively inadequate have now been reassessed by many church authorities across Australia regardless of whether or not a deed of release was entered into.

These are just a few of the procedural policy reforms that are part of a greater awareness in the Church that contribute to delivering justice for survivors.

A long-standing feature of the Catholic Church in the abuse scandal has been its silence. Bishops and religious leaders have demonstrated an aversion to the media. Their legal advisors likewise.

The Council, again, took a very different approach to public engagement.

It has been our view that now is not the time to shirk the public responsibility to speak the truth. The days of spin needed to be well past and so too the knee-jerk response to defend the institution.

Frankly, over the years the Church had clearly failed in its duty to children and to the wider community.

This failure, to a large extent, was reinforced by the way in which Church leaders spoke publicly about the child sexual abuse crisis.

Rather than re-establish trust and confidence in the church leaders, the years of public comment in which the crisis was minimised, contextualised and rationalised, in fact did the opposite and corroded trust.

The Council was not going to make the same mistake. We have tried to say it as it is.

We tried to be a voice of committed Catholics, not the voice of an institution.

We have not looked to defend decisions taken in the past but rather tried to assist in the public conversation and hopefully understanding of what had happened in the past.

Ultimately the point is that this Royal Commission was as much a legal exercise as it was a time for atonement.

For the Catholic Church, it needed to be a process of transparency and an assessment of its bona fides.

The decades of concealment and obfuscation that have characterised the Church's approach to this scandal have left it bereft of moral credibility and community support.

Society wanted and deserved answers and ordinary Catholics were no different. Approaching the Commission as an exercise to contain damage would only further exacerbate the corrosive impact of the scandal.

So, what have we learnt?

I think over the past five years the Catholic community and the Catholic leadership has learnt much about itself.

Morale within the Catholic community is low.

Ordinary Catholics have heard things about their priests, religious brothers and leaders that have shocked and confronted them.

For many the clerical child sexual abuse crisis as revealed by the Royal Commission has shaken their faith and eroded their trust in the church leadership.

But what it has also done is reinforce with many that being part of the Catholic community is more than being part of an institution.

All over Australia Catholics have come together to ask themselves what it means to be a Catholic in contemporary society.

And from what I have seen and heard it isn't about blindly adhering to the dictates of dogma and being subservient to institutional loyalty.

It is about sharing a common understanding of gospel values and how they take effect in our lives.

And what has the Church leadership learnt? Much, I think.

Many of the church leaders at the start of the Commission were at best dubious about the process and of the view that it would be little more than an exercise in 'getting the Catholics'.

Some might still be of this view but I think many more now appreciate the Commission process as absolutely necessary in enabling the full horror of the past to be revealed.

And as a result, having the ability to reset the church's approach not only to child protection issues but to many of the underlying cultural issues as well.

Never before has the issue of clericalism and its inherent evils been so often and so publicly spoken about by church leaders.

And the role and position of women in the church is now an issue that is being looked at in different ways by bishops and religious leaders.

Significantly many of the processes involved in training priests and brothers, their education around psycho-sexual development and the way in which they connect with community are all on the table.

In the end, if the Commission has done only one good thing, and it has done many, it is having forced the Church and the Church leadership to confront itself.

It has forced the leadership to recognise what went so terribly wrong and why.
And it has opened up an avenue for change, for survivors to be heard and for families and communities to reconnect.

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