

Church governance and leadership

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Introduction

The Catholic Church is in crisis. Daily revelations and announcements regarding the handling of sexual abuse are mainstream news. Catholics are angry and civil authorities are stepping in to investigate and prosecute. Business as usual won't suffice – systemic, institutional and cultural change is called for. These are dynamic and uncharted waters.

This Health and Integrity in Church and Ministry conference is an historic opportunity for those associated with church life and ministry in Australia to reflect locally on the learnings from the Royal Commission into Institutional Response to Child Sexual Abuse. However, dramatic events in Chile, the United States, Ireland and Germany in 2018 have escalated the handling of child sexual abuse in the Catholic Church to an urgent global issue – one in which there is both civil and ecclesial interest.¹ The leaked report commissioned by the German bishops² comes soon after the Pennsylvania grand jury report³ and is the latest in a long list of damning reports.⁴ What is different is that these latter reports have created a tipping point. We now hear the voices of the survivors and victims, and their narrative demands reform.

The Australian Royal Commission's final report contains some shocking and confronting evidence and findings, together with 407 recommendations, 21 of which were addressed to the Catholic Church, nine to other specific religious denominations and 27 to all religious institutions in Australia.⁵ The Royal Commission made nine recommendations in relation to canon law. It received international media attention, but not the international storm of revulsion that attended the release of the Pennsylvania grand jury report, or the shock regarding the scale of abuse in Germany.

Recent events have revealed the scale and international nature of the abuse like layers of an onion:

- the mass resignation of the Chilean bishops in June 2018 over their collective culpability in the cover-up of child sexual abuse, the pope's acceptance of seven of these resignations⁶, and his admission that he had made a 'grave mistake' in originally defending Bishop Barros
- the resignation on 30 July 2018 of Archbishop Philip Wilson of Adelaide following his conviction in a New South Wales court for concealing child sexual abuse and following calls to resign from fellow bishops, priests and the Australian Prime Minister (Archbishop Wilson has since been acquitted on appeal)
- the resignation two days earlier of Cardinal Theodore McCarrick of Washington DC, and the pope's direction that he withdraw to a life of prayer and penance while the canonical charges are heard⁷

1. This paper is an updated version of the one presented to the conference to take account of this tumultuous and dynamic environment in the global church. The author acknowledges the helpful feedback from respondents at the conference and readers of the initial draft of this paper.

2. German Catholic priests 'abused thousands of children', *BBC News*, 12 September 2018, <https://www.bbc.co.uk/news/world-europe-45500072>

3. Attorney-General of Pennsylvania. (2018). *Pennsylvania Diocese Victims Report*, Office of the Attorney-General, Commonwealth of Pennsylvania, <https://www.attorneygeneral.gov/report>

4. For a list of 26 previous Australian and overseas reports on child sexual abuse in the Catholic Church, see Cahill, D. and Wilkinson, P. (2017). *Child Sexual Abuse in the Catholic Church: An Interpretive Review of the Literature and Public Inquiry Reports*, School of Global, Urban and Social Studies, RMIT University, Melbourne, 21–2, <https://www.rmit.edu.au/content/dam/rmit/documents/news/church-abuse/child-sex-abuse-and-the-catholic-church.pdf>

5. Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report, Recommendations*, Commonwealth of Australia, <https://www.childabuseroyalcommission.gov.au/recommendations>. See also Appendix 3 of this collection, Royal Commission Recommendations Directed to Religious Institutions.

6. Pope accepts Chilean Bishops' resignation over abuse scandal, *BBC News*, 11 June 2018, <https://www.bbc.com/news/world-latin-america-44442233>; Wooden, C. (2018, 21 September). Two more Chilean bishops step down in wake of abuse crisis, *National Catholic Reporter*, <https://www.ncronline.org/news/accountability/two-more-chilean-bishops-step-down-wake-abuse-crisis>

7. Pope Francis accepts resignation of Cardinal McCarrick following sex abuse scandal, *ABC News*, 28 July 2018, <http://www.abc.net.au/news/2018-07-28/pope-accepts-mccarrick-resignation-as-cardinal/10047620>; MacDonald, S. (2018, August). Abuse survivor says senior clerics 'complicit' with McCarrick, *The Tablet*, <https://www.thetablet.co.uk/news/9505/abuse-survivor-says-senior-clerics-complicit-with-mccarrick>; Harlan, C. (2016, 16 August). US bishops say church needs lay Catholics to help address 'moral catastrophe', *The Washington Post*, https://www.washingtonpost.com/amptml/world/europe/us-bishops-say-church-needs-lay-catholics-to-help-address-moral-catastrophe/2018/08/16/9c3a5ffa-a16b-11e8-93e3-24d1703d2a7a_story.html&freshcontent

- Pope Francis writing directly to the faithful using online communication⁸
- the direct attack on the pope by a former senior Vatican diplomat, Archbishop Carlo Maria Viganò, calling on him to resign over his alleged role in the cover-ups⁹
- the public spats between progressive and conservative bishops in the United States following Viganò's letter¹⁰
- ongoing calls for Cardinal Donald Wuerl of Washington, DC to resign over his alleged mishandling of child sexual abuse, and protests against the cardinal during a recent Sunday mass¹¹
- the protests and relatively thin crowds during the pope's visit to Ireland in August 2018
- the leaking of the German bishops report on sexual abuse on 12 September 2018
- Pope Francis' historic meeting with a group of leading US Catholic bishops on 13 September 2018, and the removal of Bishop Michael Bransfield of the Diocese of Wheeling-Charleston, West Virginia, who faces allegations of abuse¹²
- the scheduling of an historic meeting in the Vatican in February 2019 of all presidents of conferences of bishops to discuss the crisis engulfing the church.¹³

Since this paper was delivered, the Australian Catholic Bishops Conference (ACBC) and Catholic Religious Australia (CRA) have formally responded, on 31 August 2018, to the findings of the Royal Commission and released the report of their Truth Justice and Healing Council's responses to the Royal Commission's recommendations.¹⁴ Their release attracted national and international media attention, with most of it focusing on the ACBC's rejection of the Royal Commission's recommendation in relation to the seal of the confessional¹⁵ – despite some 98 percent of the recommendations being accepted and a commitment from ACBC President Archbishop Mark Coleridge: 'We make the pledge "Never again". There will be no cover-up. We will respond quickly to accusations, improve governance structure, be more transparent and we will listen.'¹⁶

Arguably, this is further evidence of a tipping point – when the word of a bishop or a pope is not enough, then people demand demonstrable action. At the time of writing, the Vatican is now promising to respond to Archbishop Viganò's allegations, despite the pope originally telling reporters, 'I will not say a word about this.' Tumultuous times.

This paper on church governance and leadership will focus on the Catholic Church in Australia, as the largest of the churches¹⁷ and the religious organisation found to have perpetuated the highest incidence of child sexual abuse. The Royal Commission heard that issues related to governance contributed to the

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8. Pope Francis, *Letter to the People of God*, 20 August 2018, <https://www.vaticannews.va/en/pope/news/2018-08/pope-francis-letter-people-of-god-sexual-abuse.html>
 9. McElwee, J. J. (2018, 26 August). Pope Francis dismisses Viganò's accusations of McCarrick cover-up, *National Catholic Reporter*, <https://www.ncronline.org/news/accountability/pope-francis-dismisses-viganos-accusations-mccarrick-cover>; O'Connell, G. (2018, 10 September). The Vatican is preparing a response to Viganò's accusations, *America*, <https://www.americamagazine.org/faith/2018/09/10/vatican-preparing-response-viganos-accusations>; Rice, C. (2018, 13 September). Catholics, keep your wallets closed until the Church reforms from the Vatican down, *USA Today*, <https://www.usatoday.com/story/opinion/voices/2018/09/13/catholic-priest-corrupt-sexual-abuse-lay-parish-column/1266858002/>
 10. Coday, D. (2018, 31 August). Viganò's letter reveals church's internal power struggle, *National Catholic Reporter*, <https://www.ncronline.org/news/accountability/vigan-s-letter-reveals-churchs-internal-power-struggle>; Catholic News Service. (2018, 29 August). US bishops respond to claims made in Viganò letter, *The Tablet*, <https://www.thetablet.co.uk/news/9664/us-bishops-respond-to-claims-made-in-vigano-letter>
 11. Pope Francis accepted Cardinal Wuerl's resignation as Archbishop of Washington, DC on 12 October 2018.
 12. Zauzmer, J., and Boorstein, M. (2018, 13 September). Pope Francis meets with US bishops as more leaders face allegations of harassment and cover-ups, *The Washington Post*, https://www.washingtonpost.com/world/pope-francis-orders-investigation-of-wva-bishop-on-sexual-harassment-charges/2018/09/13/b0ebdd34-b741-11e8-94eb-3bd52dfe917b_story.html?utm_term=.4d4fc3540e27
 13. Horowitz, J., and Goodstein, L. (2018, 12 September). Pope Francis summons world's bishops to meet on sexual abuse, *The New York Times*, <https://www.nytimes.com/2018/09/12/world/europe/pope-bishops-conference.html>
 14. *Australian Catholic Bishops Conference and Catholic Religious Australia's Response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Australian Catholic Bishops Conference and Catholic Religious Australia, 31 August 2018, <https://www.catholic.org.au/acbc-media/media-centre/media-releases-new/2139-acbc-and-cra-response-to-the-royal-commission/file>. For the Truth, Justice and Healing Council's four-volume *Analysis Report* to the ACBC and CRA on the Royal Commission's final report, see <http://www.tjhCouncil.org.au> (accessed 29 October 2018).
 15. For example, see Davey, M. (2018, 31 August). Catholic church rejects royal commission call to report abuse disclosed in confession, *The Guardian*, <https://www.theguardian.com/world/2018/aug/31/priests-wont-report-abuse-disclosed-in-confession-australian-bishops-say>; McKirdy, E., and Westcott, B. (2018, 31 August). Australian Catholic Church rejects calls for priests to report child abuse confessions, *CNN*, <https://edition.cnn.com/2018/08/30/australia/australia-catholic-church-response-intl/index.html>; Australia abuse inquiry: Catholic Church rejects call to overhaul confession, *BBC News*, 31 August 2018, <https://www.bbc.com/news/world-australia-45364556>
 16. McKirdy, E., and Westcott, B. (2018, 31 August). Australian Catholic Church rejects calls for priests to report child abuse confessions, *CNN*.
 17. Bouma, G., and Halafoff, A. (2017). Australia's Changing Religious Profile – Rising Nones and Pentecostals, Declining British Protestants in Superdiversity: Views from the 2016 Census, *Journal for the Academic Study of Religion*, 30(2), 129–143.

occurrence of, and the poor response to, child sexual abuse. It heard graphic evidence of the concrete impacts that poor governance practice, such as weak transparency and limited accountability, had on the lives of individuals. It found that the ACBC and CRA are out-of-date in their methods of selection, training and ongoing support and oversight of people in ministry.¹⁸ And that the roles of senior leaders need reform to ensure that they and their organisations meet contemporary standards of good governance.

It is intended that the reflections in this paper have wider application to other religious institutions, despite their organisational and governance differences. The intent is to probe contemporary understandings of good governance practice and to consider their application to the governance of religious entities.

It will of necessity take a contained, forward-looking focus, as space permits neither a broader consideration of the perspectives of victims/survivors, nor national political debates (such as the adequacy of proposed redress payments). Instead, I will reflect on some lessons from contemporary understandings of good governance practice for religious bodies, in light of the findings and recommendations in the Royal Commission's final report.

Given that authority and responsibility within dioceses and parishes are generally vested in individual church leaders,¹⁹ and not in corporate entities/boards, some broadly accepted governance practices are of limited application, as they focus on the behaviour of boards.²⁰ However, the major principles of governance relate to norms, practices, dispositions and behaviours of those in leadership and are relevant to all forms of leadership. In this regard, it is noteworthy that the Royal Commission distinguished between the governance arrangements and management practices of some dioceses and congregations and that of many of the Catholic Church's education, health and welfare bodies (see Recommendation 16.7).

Should governance principles for corporate, government, and not-for-profit entities be applied to religious organisations?

Good governance is the set of values, norms, structures and behavioural expectations that together comprise principles with universal applicability. That is not to deny the unique theological, spiritual and canonical foundations of religious bodies and of consecrated life. Nor is it to ignore the vexed precept of the separation of church and state. However, boundaries are porous, civil and cultural norms are not neatly confined to institutional types, and community expectations are pervasive and influential. And the contractual arrangements that many church bodies, particularly in the health, education and welfare sectors, enter into for government service delivery, have exacting civil regulatory requirements that require good governance practice.

Is it reasonable to expect church bodies to operate on comparable, or equal governance standards as corporate, government and not-for-profit (NFP) entities? Should religious entities be subject to the same, or to a comparable regulatory regime?

My answer to both these questions is 'Yes!' There are a number of reasons. First, these governance principles are the ethical standards expected by the society we live in, so that there would need to be clear and exceptional circumstances to exempt religious bodies from such standards. (The universal condemnation of those Australian cricketers involved in ball tampering in South Africa in March 2018, is a good illustration of how such society-wide norms are immediately thrown into sharp relief when transgressed.)

Second, most religious bodies are in receipt of monies from government, donors, or grant-makers. It is not unreasonable that they adopt generic, broadly-accepted governance standards as a means of accountability and assurance.

Third, the Catholic Church teaches the need for church bodies to understand and respect the cultural and legal norms of the communities in which they operate, and other churches have similar expectations.²¹

18. See Recommendations 16.20–16.25.

19. See *1983 Code of Canon Law*, Canons 135–144.

20. This may be behind the observation in Volume 2, page 33 of the TJHC *Analysis Report* that whether the Royal Commission understood the complex theological reality of ecclesial governance structures within the Catholic Church is a 'moot point', and its attempts to equate church structures and processes to those of a commercial entity were 'misconceived'. On the other hand, the TJHC comments that it is hard to argue against the Royal Commission's findings in this area.

21. Although it was argued in evidence to the Royal Commission that the church teaches that all members of the church are to obey the civil law 'provided that it doesn't conflict with the moral order'. See Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report, Volume 16, Book 2*, 699, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_16_religious_institutions_book_2.pdf

For example, the 1983 Code of Canon Law provides that:

*Canon 22. When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, in so far as it is not contrary to divine law, and provided it is not otherwise stipulated in canon law.*²²

Fourth, it has been argued that the standards of governance within canon law are at least equal to those proposed for all other charities. With the advent of the Australian Charities and Not-for-profits Commission (ACNC) in December 2012, the regulatory expectations and legal requirements of all charities were set out in the *ACNC Act 2012 (Cth)*²³ and then the *Charities Act 2013 (Cth)*.²⁴ The legal position in common law countries, dating back to 1601, is that religious bodies are charities. They are therefore covered by the same regulatory provisions as all other charities. However, in the drafting of the ACNC Act, an exemption was created that saw a new type of entity enshrined into statute – the Basic Religious Charity (BRC). Entities that meet the eligibility criteria are exempt from the reporting obligations of other charities and not-for profits.²⁵ In arguing for the exemption, the position was put, and accepted at the time, that the governance standards contained in the ACNC Act, and those embedded in canon law, were equivalent. In practice, this exempts entities such as parishes from reporting their financials annually to the national regulator, and from the requirement to meet the governance standards. They do not have to be accountable to their ‘members’, nor assure the suitability or conduct of their ‘responsible persons’.

Curiously, reporting exemptions for Basic Religious Charities may find little support in the Vatican now. In a recent interview reflecting on the church’s response to the sexual abuse scandals globally, Fr Hans Zollner SJ, psychologist and theologian, and President of the Centre for Child Protection at the Pontifical Gregorian University in Rome, noted:

*We should be talking not only about the past and present, but the future. It’s in the best interests of the Church as an institution, a system, that we are as transparent as possible. That will help us to be more credible. Paradoxically, admitting your mistakes makes you more authentic and credible than when you try to hide them. This is a logic that works in the era of social media even more than before, and it’s something we haven’t yet understood.*²⁶

For the reasons set out above, I would argue that it is reasonable to expect church bodies to meet the ACNC’s governance standards. At the time of the drafting of the ACNC Bill, the institutional deficiencies in church governance had not yet been exposed by the Royal Commission. In the wake of the Royal Commission’s revelations, it is now difficult to argue that church entities should continue to be exempt from meeting the same governance standards as other charities, from reporting compliance with these standards, or from facing the same consequences for breaching these standards.

The rationale set out here bolsters Recommendation 16.7 of the Royal Commission’s final report, that 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.

Charities receive billions of dollars annually in funding and tax relief from governments at all levels. They are often in receipt of donations and philanthropic bequests, and many deliver services on behalf of governments. Some enter into contractual arrangements with commercial entities to deliver programs and services in areas such as health, disability and aged care. The single biggest grouping of charities in Australia is religious organisations, and they offer a broad range of services, often to vulnerable and marginalised beneficiaries such as the homeless, but also to more privileged members of our community through enterprises such as private NFP hospitals. Church bodies constantly interact with other entities, and established commercial requirements, especially standards of governance, should be expected of all.

22. There are sometimes widely differing interpretations of canons, including Canon 22. In his testimony to the Royal Commission, Kieran Tapsell argued that this canon expresses a ‘general principal whereby canon law has priority over civil law wherever there is a conflict’ (see Royal Commission into Institutional Responses to Child Sexual Abuse. [2017]. *Final Report, Volume 16, Book 2*, 700, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_16_religious_institutions_book_2.pdf). Professor Rik Torfs takes a similar view in his keynote paper for the Health and Integrity conference. It should be noted that the existence of different English translations of the 1983 Code contributes to this diversity of interpretations.

23. *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*, <https://www.legislation.gov.au/Details/C2012A00168>

24. *Charities Act 2013 (Cth)*, <https://www.legislation.gov.au/Details/C2013A00100>

25. To meet the eligibility criteria, an entity must (amongst other factors) have religion as its sole purpose, not be an incorporated entity, not have Donor Gift Recipient (DGR) status, and not have received more than \$100,000 funding from government in the preceding three years.

26. San Martin, I. (2018, June). Expert on Abuse says it’s about, ‘who are we as a Church?’ *Crux*, <https://cruxnow.com/interviews/2018/06/01/expert-on-abuse-says-its-about-who-are-we-as-a-church>

Governance standards

The not-for-profit (NFP) sector is often described as the third sector, after government and the commercial (corporate) sectors. There are some differences in the governance standards for each of the three sectors, but also a high degree of commonality. This section will outline some key governance standards, principles and codes across the three sectors and then identify those sufficiently common to be described as generic, and those with particular application to religious bodies.

Corporate governance expectations are embedded in legislative requirements, including in the *Corporations Act 2001* (Cth);²⁷ in case law; in regulatory requirements; and in non-binding principles or guidelines, such as the Australian Securities Exchange Ltd (ASX) and Australian Institute of Company Directors (AICD) governance principles.²⁸ There are annual public reporting cycles to shareholders and reporting requirements to regulatory bodies. Increasingly, activist shareholder bodies and large investment funds are also holding corporate boards to account.

While many of the governance principles relate to the expectations of boards, and in that respect are of limited application to church models of leadership at the hierarchical level, the fundamental norms of behaviour, competencies and commitments are principles that apply to all participating in a developed society, whether individuals or corporate citizens. A recent debate about the degree of prescription and 'political correctness' in corporate governance requirements triggered by new AMP Board Chair, David Murray,²⁹ has not diminished acceptance of the need for and benefits of governance principles or standards. As Dr Angelo Aspris, Senior Lecturer in Finance at the University of Sydney, has commented:

While good governance and corporate performance go hand in hand (with plenty of evidence to support this), we should never pretend, even for a moment, that adhering to best practice will prevent the next Big-Un, Blue Sky, RFG, GetSwift or Dick Smith.

It should be noted, however, that the development of ASX corporate governance principles has been effective in raising standards of corporate behaviour, disclosure and accountability on average. Credit is due here. But this is where it ends. Murray's main criticism is that there is now significant regulatory overreach.³⁰

A comparison of the ASX Corporate Governance Principles³¹ and the AICD Guiding Principles of Good Governance,³² reveals that both identify ethics and accountability as key principles while using slightly different language (such as timely and balanced disclosure for accountability). That boards work to instil a culture that supports the organisation's purpose is included in the AICD principles (and the ASX has been criticised for the absence of a principle relating to culture in its current version). It is noteworthy that the ASX Corporate Governance Principles are currently under review and that the ASX does identify 'integrity in corporate reporting' as a key principle in the 2014 version. Both sets of principles include risk management, arguably important for corporate and individual models of leadership.

In the government sector, there are behavioural standards for public sector employees that, if met, support good governance practices. Commonwealth public servants are required to comply with the Australian Public Service Commission (APSC) code of conduct, which specifies impartiality, commitment to service, accountability, respect and ethical behaviour.³³ Australia's state and territory jurisdictions have a range of very similar requirements set out for their employees, departments and government boards.

27. *Corporations Act 2001* (Cth), <https://www.legislation.gov.au/Details/C2018C00275>

28. The Australian Securities Exchange Limited (ASX) has published three editions of the ASX Corporate Governance Principles and Guidelines for Corporate Australia. The ASX also has binding rules for listing on its exchange. The Australian Institute of Company Directors (AICD) has published *Guiding Principles of Good Governance* and a range of materials to support their implementation, as well as *The Good Governance Principles and Guidance for Not-for-Profit Organisations* (which are currently under review).

29. David Murray kicks off a debate that is clearly needed, *Australian Financial Review*, 2 August 2018, <https://www.afr.com/opinion/editorials/david-murray-kicks-off-a-debate-that-is-clearly-needed-20180801-h13fys>; Aspris, A. (2018, 3 August). AMP's Murray right to question the value of corporate governance rules, *The Conversation*, <https://theconversation.com/amps-murray-right-to-question-the-value-of-corporate-governance-rules-100954>

30. Aspris, A. (2018, 3 August). AMP's Murray right to question the value of corporate governance rules, *The Conversation*.

31. See ASX Corporate Governance Council. (2014). *Corporate Governance Principles and Recommendations*, 3rd edition, <https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>

32. See Australian Institute of Company Directors. (2017). *Guiding Principles of Good Governance*, <http://www.companydirectors.com.au/~media/resources/director-resource-centre/governance-and-director-issues/guiding-principles-of-good-corporate-governance.ashx?la=en>

33. Australian Public Service Commission. (2014). *Code of Conduct*, <https://www.apsc.gov.au/code-conduct>

By way of example, in Western Australia's Public Sector Commission (WA PSC) *Good Governance Guide for Public Sector Agencies*,³⁴ ethics and integrity, accountability, and risk management are once again included. The APSC conduct code, the WA PSC governance guide, and the ASX principles all note the importance of respect.

The expectations of individual directors of corporate entities in the government sector is set out in the Victorian Public Sector Commission's 2017 directors' guide to public entity governance.³⁵ An extract below advises directors on their responsibilities and accountabilities:

*While the same general principles of governance operate in the public, not-for-profit and private sectors, some differences of emphasis apply in the public sector. These differences arise from the fact that public entities are part of the executive arm of Government. That is, they are created, resourced and supported by Government to carry out a public function. Therefore, public entities need to implement and comply with government policy and applicable legislation. As a consequence, this generally means there are higher transparency requirements than in the private sector.*³⁶

The emphasis in the VPSC guidance on transparency, proper behaviours, values and stakeholder engagement is not surprising for a public sector body.

Finally, the NFP sector is required to comply with regulatory requirements at state and territory level, and with the ACNC and Charities Acts if they are charities, as are most church agencies apart from Basic Religious Charities. Like corporate Australia, the charitable sector is very diverse, with the top 10 percent of charities by size commanding some 80 percent of the revenue in the sector. Around 37 percent of charities are very small, with revenue under \$50,000 per annum, and most of these are run by volunteers. Many charities of all sizes are reliant on the services of volunteers. Given the nature of the sector, the ACNC's governance standards were pitched at a level to ensure that the broad range of charities could understand their obligations and comply. Whilst generally applying to agencies, rather than to the institutional church or religion, the ACNC governance standards contain generic governance principles that should be considered by all institutions, and particularly by those with leadership responsibilities.³⁷

The Australian Institute of Company Directors (AICD) *Good Governance Principles and Guidance for Not-for-profit Organisations* fleshes out the baseline governance expectations, with an eye both to the ACNC Governance Standards and its own guiding principles on good corporate governance.³⁸ It is noteworthy that the Royal Commission's final report referred to the utility of these standards.³⁹

It was a strong focus of the ACNC during its establishment phase that charities were provided with accessible materials, education and advice on the governance standards. The NFP sector had lobbied for decades for a fit-for-purpose national regulator and there was a clear disposition by most charities to comply with the new regulatory requirements. While a small minority of religious leaders and entities

34. There are nine governance principles contained in Western Australia's Public Sector Commission *Good Governance Guide for Public Sector Agencies*. The guide says attention to these principles will assist agencies to have appropriate systems and structures to meet accountability obligations and achieve a high level of organisational performance. See Western Australia Public Sector Commission. (2018). *Good Governance Guide for Public Sector Agencies*, Perth, <https://publicsector.wa.gov.au/public-administration/public-sector-governance/good-governance-guide-public-sector-agencies>

35. Victorian Public Service Commission. (2015). *Welcome to the Board: Directors' Guide to Public Entity Governance*, Melbourne, <https://vpsc.vic.gov.au/html-resources/welcome-to-the-board/>

36. Extract from Victorian Public Service Commission, *Welcome to the Board: Directors' Guide to Public Entity Governance* (Section 2.1): While the same general principles of governance operate in the public, not-for-profit and private sectors, some differences of emphasis apply in the public sector. These differences arise from the fact that public entities are part of the executive arm of Government. That is, they are created, resourced and supported by Government to carry out a public function. Therefore, public entities need to implement and comply with government policy and applicable legislation. As a consequence, this generally means there are higher transparency requirements than in the private sector ... [T]he emphasis on demonstrating proper behaviours and values is also generally greater ... [S]ince entities use state power and resources, citizens, media and integrity bodies monitor what entities do and how they do it. Adverse findings or publicity can affect directors' and entities' reputations and can also lead to removal by the Minister.

37. Registered charities (except for a limited class of charities called 'basic religious charities') must meet a set of five 'governance standards' to be and remain registered with the ACNC. The governance standards are a set of five core, minimum standards of governance. Broadly, they require charities to remain charitable, operate lawfully, and be run in an accountable and responsible way. They are intended to help charities remain trusted by the public and continue to do their charitable work. See Australian Charities and Not-for-profits Commission, *ACNC Governance Standards*, <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-standards>

38. Australian Institute of Company Directors. (2013). *Good Governance Principles and Guidelines for Not-for-Profit Organisations*, <http://www.companydirectors.com.au/~media/cd2/resources/director-resources/nfp/pdf/nfp-principles-and-guidance-131015.ashx>

39. Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report, Volume 16*, 147, <https://www.childabuseroyalcommission.gov.au/making-institutions-child-safe>

were opposed to the introduction of a national charity regulator, many religious organisations to whom the regulatory regime applied, used the introduction of the legislation to review their governance arrangements, reorganise reporting relationships, and refresh their governing rules. In my experience, most of those who had reservations at the start came to see the benefits of light-touch regulatory oversight, at least for their funded agencies.

The AICD Governance Principles and Guidelines for NFP Organisations and the ACNC Governance Standards share with many of the corporate and government principles, standards and guidelines, an emphasis on accountability, culture, integrity, ethics, risk management and stakeholder engagement. Given the critical importance of charities working toward their charitable purpose, it is not surprising that both the AICD NFP principles and the ACNC standards include these elements. The AICD and other peak bodies are also committed to diversity – in particular, to gender equity in organisational leadership, a key feature of good governance implicit in the principles (and supported by extensive documentation and research findings in equal opportunity legislation).

The Royal Commission's final report contains many references to the absence (or weak presence) of lay involvement in Catholic Church governance,⁴⁰ especially of laywomen, and notes the benefits of inclusivity. The introduction of a new canonical legal form of governance, the Public Juridic Person,⁴¹ which is being adopted by a number of Australian Catholic religious congregations to oversee their enterprises, has attracted a broad range of lay women and men experienced in professional governance practice into governance roles in these institutions. This represents a useful model for other church agencies to examine.

I want to briefly examine two other key documents of relevance to this paper, before moving to reflection. In December 2017, a group of professional member bodies published *Managing Culture: A Good Practice Guide*,⁴² following concerns aired by the Australian Securities and Investment Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) about evidence of poor corporate practice and the significant risks around poor corporate culture in Australia. It defines governance as having four key components – transparency, accountability, stewardship, and integrity. It notes that culture is inextricably linked to governance, and that strong governance underpins a healthy culture. It proposes that those responsible for the governance of an organisation should embed an ethical framework that is practical, authentic, stable and understandable, noting that the culture of an organisation must be driven and modelled by the leaders. It also cites the UK Banking Standards Board characteristics of good culture – honesty, respect, openness, accountability, competence, responsiveness, personal and organisational resilience, and shared purpose.⁴³ If we examine these attributes in relation to more broadly framed governance principles and standards outlined earlier, we find a striking congruence.

Finally, the report of the Prudential Inquiry into the Commonwealth Bank of Australia (CBA) commissioned by Australian Prudential Regulation Authority (APRA), not only examines the governance and fiduciary conduct of the CBA but provides general advice in its commentary and findings.⁴⁴ I will focus on two themes from the report which are of relevance to our discussion. First, the authors note that 'compliance obligations are broader than strict legal requirements and incorporate standards of integrity and ethical behaviour'.⁴⁵ The report also notes that 'compliance functions globally have more recently been focused not just on evaluating with business units whether an activity or product is allowed under regulation ('can we?') but, critically, whether they should engage in such an activity or product in the first place ('should we?')'.⁴⁶

40. It is important to note the difference between governance and management when analysing the involvement of laypeople, especially women. Increasingly women are taking key management roles in church agencies, including smaller numbers in diocesan entities (as distinct from incorporated health, education and welfare bodies).

41. A PJP is a church entity which is able to act in the name of the church. Canon law defines a PJP as 'an aggregate of persons or things constituted by the competent ecclesiastical authority to fulfil a proper function given them in view of the common good' (Can. 114 §1).

42. See Chartered Accountants Australia and New Zealand, The Ethics Centre, Governance Institute of Australia and Institute of Internal Auditors Australia. (2017). *Managing Culture: A Good Practice Guide*, <https://www.iaa.org.au/technical-resources/publications/managing-culture---a-good-practice-guide>

43. *ibid*, 22.

44. The Australian Prudential Regulation Authority (APRA) established an inquiry into the Commonwealth Bank of Australia (CBA) following a series of damaging incidents and business practices that had damaged the reputation and public standing of the bank. Headed by former APRA Chairman, John Laker AO, with members Jillian Broadbent AO and Graeme Samuel AC, the inquiry panel not only investigated the CBA's governance shortcomings and malpractice, but also presented its findings in light of accepted standards of good governance practice.

45. APRA. (2017). *Prudential Inquiry into the Commonwealth Bank of Australia*, 7, https://www.apra.gov.au/sites/default/files/CBA-Prudential-Inquiry_Final-Report_30042018.pdf

46. *ibid*, 35.

My reflection on this apt distinction is that many of the lawyers advising church leaders and agencies on their responses to allegations of sexual misconduct over time would have been more helpful had they understood this ethical dichotomy.

The APRA-commissioned report also looks at accountability, given the legalistic, perfunctory and defensive posture that the CBA displayed with oversight bodies. It notes that ‘accountability means being answerable for actions, decisions and outcomes within one’s area of control and influence ...’, and that ‘... accountability can be delivered through formal frameworks and culture ... [H]owever, the cornerstone of culture is the actions and behaviours of the CEO and the Group Executives, and the standard to which they are held by the Board’.⁴⁷ The parallel for a Catholic Church leader is that the cornerstone of culture is the actions and behaviours of the bishop and the standards to which he is held by the Vatican.

The Royal Commission’s final report found deficiencies in both canon law and Vatican procedures. The hierarchical nature of church governance; the independence, power and lack of accountability of bishops; deficiencies in relation to accountability, transparency and inclusion in decision-making; and the slow and inconsistent responses from the Vatican were amongst the governance problems besetting the local church. As noted earlier, the Royal Commission recommended that the ACBC review governance and management structures of dioceses and parishes, with an eye to lessons from the management and governance of its health, welfare and education bodies. Such a broad governance review might consider requiring all dioceses to publish annual reports with detailed financial statements, greater use of advisory bodies at parish and diocesan levels, and the inclusion of independent/community representatives on boards (something The Salvation Army is introducing).

The APRA report into the CBA has already been very influential on governance practice in Australia. Given its concurrence with the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, its influence is likely to continue. Other inquiries into corporate behaviour in Australia, such as the 2017 independent review of the board of the Certified Practising Accountants (CPA),⁴⁸ also contain important lessons on proper relationships, reasonable remuneration, transparency and organisational culture.

Personal reflection

One of the challenges in addressing issues at the nexus of civil, canonical and theological understandings, is the use of language. Whereas the APRA inquiry into the CBA refers to the ‘could we?’/‘should we?’ dichotomy, we might expect religious entities to speak more in terms of ethics and morals. While secular bodies speak of governance, many churches are more likely to speak of divine guidance, discernment and relationships. These communication differences can pose challenges in getting the conversation started, but they are important to acknowledge, because people may be in furious agreement but using different language.

The incident that best illustrates this for me is the use of language in the report of the 2009 Victorian Bushfires Royal Commission. I was one of the three Commissioners – none of us knew one another before the inquiry. In our early conversations, we identified that the sanctity of human life was paramount in our deliberations. We discovered that we were all Catholic! It is noteworthy that in the report we talk of the primacy of human life – secular language, but the same concept.

I have worked and volunteered in a number of church agencies and was appointed as inaugural Commissioner of the ACNC, hence I have many first-hand and professional insights into the conduct of religious agencies. I have great respect for the overwhelming majority of volunteer, consecrated, and paid personnel who contribute to the varied work of churches in Australia. However, I have witnessed power asymmetries, weak transparency (including within church bodies), and governance tensions at the interface between civil and canonical codes.

I will illustrate with a short anecdote. At one stage of my career, I sat on the governing board of a well-run church agency. This entity did no public reporting. When some of us pointed to the benefits of an annual report, the Chair became quite agitated. This person fulminated, ‘Transparency! Transparency! Has anyone stopped to ask if it’s a good idea?’ The problem was that this person had been appointed by

47. *ibid*, 58.

48. McPhee, I., et al. (2017, 30 November). *CPA Australia Independent Review Report*, Melbourne, <https://static1.squarespace.com/static/596d2063579fb3247d043fbc/t/5a1f54fa9140b75e12b65280/1512002865635/CPA+Australia+Independent+Review+Final+Report.pdf>

the bishop and was seen to represent the views of the bishop. Therefore, it sent a chill not just through the committee, but other agencies who heard of the encounter. It operated normatively, dampening accountability not only in that agency, but in the diocese. There was nothing to hide – the agency was well run. But the default position was to quash transparency and avoid any scrutiny. A series of Royal Commission recommendations on child safety and church governance and the Catholic Church's own draft Child Safe Standards now make this position untenable.

Another illustration is of an incident much earlier in my career, in the mid-1970s when I was a neophyte teacher in a Catholic school in Western Australia. This was the era of the Karmel Commission and generous grants for non-government schools – a new phenomenon at that time. My school had applied for a library grant, but then proceeded to use the money to create a special education centre. Even as a young teacher, this seemed wrong to me. When I pointed out the discrepancy to the nun in charge, she patted me on the hand and said, 'Don't worry dear. It's all God's work.' Her assurance didn't assuage my unease. The nun concerned had no ambiguity in her mind about the creative use of public monies for God's work. This is an example of conduct that might meet a personal code of ethics – after all, she was not about to benefit personally. However, it would not meet a basic fiduciary and governance standard – monies should be spent for the purposes for which they are given.

Unfortunately, in the intervening decades, I have seen, and continue to see, examples where those working for church agencies fail to fully grasp the inadequacies and illegalities of such an approach. 'Doing God's work' is not an adequate rationale for ignoring basic governance precepts. Ongoing education in good governance and transparent reporting (both recommended by the Royal Commission) are key means by which to address such behaviours.

Shrinking numbers of churchgoers and regular financial contributors are reducing parish and diocesan coffers and necessitating the identification of other sources of income. In addition, the financial redress of survivors of child sexual assault will put stress on the viability of many congregations and dioceses. In locating other sources of income, those charged with managing the financial affairs of religious bodies would be wise to keep ethical considerations and fiduciary standards in their line of sight – the 'could we?'/ 'should we?' dichotomy. In the event that one church agency freely agrees to provide financial support to another, then it has the status of a donor. However, if the 'donor' agency is operating under direction or duress, the transaction might at best be improper, and at worst illegal.

I have seen professional advisors, awed in an episcopal presence and too keen to please, advise on courses of action and behaviours that might be within the letter of the law but are certainly not within its spirit.⁴⁹ The onus is on church leaders to reform the institutional church by adopting the general governance principles identified earlier, relating to culture, ethical behaviour and integrity, and to avoid short-term gain at the risk of a longer term loss of moral authority and reputation. When I was ACNC Commissioner, I urged those responsible for charities to act ethically and within the spirit of the law or risk reducing trust in their enterprise and trashing their brand. This is a lesson learned too late by Oxfam UK, who have suffered a massive blow to their reputation and their bottom line following their recent inept handling of historic sexual abuse allegations.⁵⁰

A further reflection is that there is not always an easy fit between the requirements of canon and civil law for the management of church agencies, and the broader relationships between church and state. The bishop is appointed with absolute authority within the diocese (subject to canon law, civil law and Vatican requirements). Members of the diocese are subject to his authority and are expected to obey. Difficulties can arise when senior lay personnel are also subject to the requirements of government contracts and are personally responsible and liable for the proper expenditure of monies from the public purse. The requirements of directors of Victorian Government boards outlined earlier, illustrate the elevated expectations from government of those delivering contracted services such as education, health or welfare. It is notable that there are higher transparency requirements, and that integrity officers such as auditors-general and anti-corruption commissioners have an interest in their work.

49. Evidence to the Royal Commission in relation to the Ellis case is a good example of this.

50. Elgot, J., and McVeigh, K. (2018, 21 February). Oxfam loses 7,000 donors since sexual exploitation scandal, *The Guardian*, <https://www.theguardian.com/world/2018/feb/20/oxfam-boss-mark-goldring-apologises-over-abuse-of-haiti-quake-victims>; Khan, E. (2018, 18 May). Oxfam to lay off 100 people as funding falls following aid worker sex scandal, *The Independent*, <https://www.independent.co.uk/news/uk/home-news/oxfam-charity-lay-off-100-people-haiti-sex-scandal-funding-cut-a8357476.html>

Church agencies are in receipt of tens of billions of dollars in funding gleaned by governments from taxpayers. It would be wise for the proposed review of governance arrangements in the Catholic Church (and for other churches) to consider not only their structures, but their management practices and reporting relationships, so that there is a greater understanding of roles and responsibilities – and liabilities. As well, the reporting obligations mandated by accountability requirements warrant a proactive rather than reluctant stance. One of the lessons from the APRA inquiry into the CBA, is that the bank had defensive and perfunctory relationships with regulatory bodies. Far better for religious organisations funded by government to get onto the front foot, motivated by a commitment to transparency and accountability.

Response of the Catholic Church

There are signs of hope. Pope Francis' recent letter acknowledged the moral failure and criminal behaviour and pledged to rectify the culture and practice that allowed it to flourish:

Looking back to the past, no effort to beg pardon and to seek to repair the harm done will ever be sufficient. Looking ahead to the future, no effort must be spared to create a culture able to prevent such situations from happening, but also to prevent the possibility of their being covered up and perpetuated ... [T]he extent and the gravity of all that has happened requires coming to grips with this reality in a comprehensive and communal way ... [I]t is impossible to think of a conversion of our activity as a Church that does not include the active participation of all the members of God's People.⁵¹

One of the Pontiff's key advisers on handling sexual misconduct, Cardinal Seán O'Malley, issued a forthright statement of the need for change:

The Church must embrace spiritual conversion and demand legal transparency and pastoral accountability for all who carry out its mission. This transformation is not easily achieved, but in all aspects it is imperative. The way we prepare priests, the way we exercise pastoral leadership and the way we cooperate with civil authorities; all these have to be consistently better than has been the case ... [T]he clock is ticking for all of us in Church leadership, Catholics have lost patience with us and civil society has lost confidence in us. But I am not without hope and do not succumb to despondent acceptance that our failures cannot be corrected.⁵²

Cardinal Daniel DiNardo, President of the US Conference of Catholic Bishops, described the handling of allegations regarding former Cardinal McCarrick and the findings of the Pennsylvania Grand Jury inquiry, as a 'moral catastrophe':

Whatever the details may turn out to be regarding Archbishop McCarrick or the many abuses in Pennsylvania or anywhere else, we already know that one root cause is the failure of episcopal leadership ... [T]he overarching goal in all of this is stronger protections against predators in the Church and anyone who would conceal them, protections that will hold bishops to the highest standards of transparency and accountability.⁵³

In Australia, following publication of the pope's letter, the ACBC President, Archbishop Mark Coleridge, issued a call to action on behalf of his fellow bishops:

These are important words from Pope Francis, but words are not enough. Now is the time for action on many levels.⁵⁴

The formal response of the ACBC and CRA to the Royal Commission's recommendations contained strongly worded commitments for action to protect the vulnerable and improve governance. However, as Cardinal O'Malley noted, such guarantees now fall on jaded ears. The church faithful and civil society are reserving judgement, and state and territory governments are pitting themselves on a collision course with church authorities by introducing legislation to mandate reporting of child abuse revealed in the confessional.

51. Pope Francis, *Letter to the People of God*, 20 August 2018, <https://www.vaticannews.va/en/pope/news/2018-08/pope-francis-letter-people-of-god-sexual-abuse.html>

52. Cardinal O'Malley: legal transparency and pastoral accountability needed, *The Boston Pilot*, 16 August 2018, <https://www.thebostonpilot.com/article.asp?ID=183059>

53. President of U.S. Bishops' Conference announces effort that will involve laity, experts, and the Vatican as U.S. bishops resolve to address 'moral catastrophe', United States Conference of Catholic Bishops, 16 August 2018, <http://usccb.org/news/2018/18-139.cfm>

54. Statement from ACBC President, Archbishop Mark Coleridge, Australian Catholic Bishops Conference, 21 August 2018, <https://www.catholic.org.au/acbc-media/media-centre/media-releases-new/2137-acbc-statement-on-pope-francis-letter-on-sexual-abuse/file>

There is some assurance in the reflections of the incoming Archbishop of Melbourne, Archbishop Peter Comensoli, on his appointment to Australia's largest diocese in a post-Royal Commission era, in an interview with *The Tablet* on 18 July 2018:

*The new Archbishop of Melbourne says that rebuilding trust in the Church requires looking at all governance while ensuring that safeguarding procedures are compliant. 'It is also about how do I, as a bishop, find a way of building a safe culture based on trust and compassion for those who have been abused, and for the families harmed by abuse', he explained.*⁵⁵

The Royal Commission's final report identified an interplay of factors that contributed to the Catholic Church's response to child sexual abuse:

*Child sexual abuse by Catholic clergy and religious may be explained by a combination of psychosexual and other related factors on the part of the individual perpetrator, and a range of institutional factors, including theology, governance and culture. The same theological, governance and cultural factors that contributed to the occurrence of the abuse also contributed to inadequate responses of Catholic institutions to that abuse.*⁵⁶

The Commitment Statement from the leadership of the Catholic Church in Australia during the conduct of the Royal Commission⁵⁷, and the subsequent release of the Catholic Professional Standards Ltd draft Child Safe Standards, based on the 10 Child Safe Standards identified by the Royal Commission, were positive and proactive first steps which acknowledged wrongdoing and addressed the better management of child abuse allegations in the future.

In Catholic Professional Standards Ltd⁵⁸ and the Implementation Advisory Group,⁵⁹ the Catholic Church in Australia has formalised the establishment of independent mechanisms whose task is to progress the Royal Commission's recommendations. Local initiatives such as the reform of governance arrangements in the Diocese of Sale,⁶⁰ and the workshops with Fr Hans Zollner SJ, auspiced by the Archbishop of Brisbane in 2017 and the bishops of Wollongong and Paramatta in 2018, are examples of proactive local responses.

However, these necessary and important steps do not address the broader critique from the Royal Commission of factors such as clericalism, organisational structure, governance, leadership, canon law, and other factors such as the selection, training and oversight of people in ministry, the confessional, and the effect of celibacy. The German Bishops report and the Pennsylvania Grand Jury report, following so closely on the Royal Commission's final report, illustrate the degree to which these are global issues. Indeed, Pope Francis refers to clericalism and the exclusion of lay Catholics in his letter *To the People of God*.⁶¹ As noted earlier, the exclusion of women from most aspects of Catholic Church governance was observed by the Royal Commission as a factor which may have contributed to the inadequate response of Catholic Church institutions to sexual abuse allegations. This short paper does not have time to explore all these factors, but will make brief comment on the three that relate most closely to good governance practice – organisational structure, leadership, and canon law.

55. Lamb, C. (2018, 17 July). Melbourne's new archbishop says promoting the Church as an 'institution' allowed "great evils" to happen, *The Tablet*, <https://www.thetablet.co.uk/news/9412/-melbourne-s-new-archbishop-says-promoting-the-church-as-an-institution-allowed-great-evils-to-happen>. See also Cowie, T. (2018, 31 July). Melbourne's new Catholic archbishop hopes to help heal city's wounds, *The Age*, <https://www.theage.com.au/national/victoria/melbourne-s-new-catholic-archbishop-hopes-to-help-heal-city-s-wounds-20180731-p4zumb.html>

56. Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report, Executive Summary*, 67, <https://www.childabuseroyalcommission.gov.au/preface-and-executive-summary>

57. The Commitment Statement was first published in the Truth Justice and Healing Council's *Submission in response to the Royal Commission's Issues Paper No. 2, Towards Healing*, 20 September 2013, page 1, http://www.tjhcouncil.org.au/media/39435/30549468_2_TJHC-Towards-Healing-submission-30-Sep-2013.pdf

58. Catholic Professional Standards Ltd (CPSL) was formed by the ACBC and CRA in response to the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse. It operates independently from the church. There are no bishops, priests or religious brothers or sisters on the CPSL Board. CPSL board directors are laypeople with professional expertise in the fields of law, education, human services, safeguarding and regulation. (From CPSL website <https://www.cpsltd.org.au/about-us/who-we-are/>)

59. The Implementation Advisory Group will advise the ACBC and CRA on reforms to ensure that Catholic institutions and communities are places of safety and transparency and advise on matters such as support of survivors; governance and church culture; child-focused standards; National Redress Scheme; seal of confessional and mandatory reporting; handling of abuse allegations and concerns.

60. See http://www2.ceosale.catholic.edu.au/Governance_of_Catholic_Education.aspx

61. Pope Francis, *Letter to the People of God*.

Extracts from the Executive Summary of the Royal Commission's final report illustrate a clear view on inadequacies in organisational structure and governance:

The governance of the Catholic Church is hierarchical ... [T]he powers of governance held by individual diocesan bishops and provincials are not subject to adequate checks and balances. There is no separation of powers, and the executive, legislative and judicial aspects of governance are combined in the person of the pope and in diocesan bishops. Diocesan bishops have not been sufficiently accountable to any other body for decision-making in their handling of allegations of child sexual abuse or alleged perpetrators ... [T]he hierarchical structure of the Catholic Church created a culture of deferential obedience in which poor responses to child sexual abuse went unchallenged ... [T]he exclusion of laypeople and women from leadership positions in the Catholic Church may have contributed to inadequate responses to child sexual abuse. In accordance with contemporary standards of good governance, we encourage the Catholic Church in Australia to explore and develop ways in which its structures and practices of governance may be made more accountable, more transparent, more meaningfully consultative and more participatory, including at the diocesan and parish level.⁶²

The recommendation that the ACBC should conduct a national review of governance and management (Recommendation 16.7), provides a timely opportunity for the senior leadership of the Catholic Church in Australia to examine its structures, cultural norms, and operating procedures in light of contemporary good governance practice, some of which have been outlined earlier. The conduct of the review itself will be telling, in terms of the degree of consultation, levels of inclusion, and amount of transparency. With the passage of time, it is likely that the potency and urgency of the findings of the Royal Commission will diminish, and religious bodies may revert to business as usual – hence the hope that church leaders of all religious affiliations will proactively use the Royal Commission's findings to examine their practices against their own precepts and good governance principles – not just in relation to the prevention of child sexual abuse, but more broadly. For the Catholic Church, the Plenary Council of 2020–21 is a timely focal point.

In relation to leadership, the Royal Commission found that prioritising reputation over pastoral responses led to catastrophic consequences for the victims of child sexual abuse. It queried the basis and process for the selection of bishops and recommended that the ACBC request the Holy See to amend the appointment process for bishops. This is one of a number of recommendations (along with the recommendation that there should not be an exemption for the seal of the confessional in proposed mandatory reporting laws in relation to child sexual abuse) that have implications for the global church. This puts the ACBC in the position of potentially breaking new ground for the global church in their handling of a local response. This could be viewed either as a threat or an opportunity. I see it is an unprecedented opportunity for leadership from a local church that already has taken the initiative and put the mechanisms in place for an historic Plenary Council in 2020.

The Royal Commission found that canon law was unhelpful in guiding responses to allegations of child abuse: 'We heard that canon law as it applied to child sexual abuse was cumbersome, complex and confusing.'⁶³ The Royal Commission made a number of recommendations for reform of aspects of canon law, including the establishment of a national ecclesiastical court.

All organisations in the corporate, government and NFP sectors are subject to binding regulatory requirements, non-binding guidelines, and good practice codes, principles and standards that can also assist in supporting the primacy of ethical practice in the culture and conduct of religious organisations. As the APRA inquiry into the Commonwealth Bank of Australia found, legalistic and defensive postures are unhelpful – good practice adopts proactive approaches to ensuring that throughout the organisation, the 'should we?' approach takes precedence over the 'could we?'. And recent good governance guides have emphasised the importance of culture led from the top to guide practice throughout the enterprise. As argued earlier, churches may use different language, but these principles and behaviours are universal. Ethics, integrity, the dignity of the human person, and care for the vulnerable sit at the heart of church practice – its leaders now have the opportunity to reassert them.

62. Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report, Executive Summary*, 69, <https://www.childabuseroyalcommission.gov.au/preface-and-executive-summary>

63. *ibid*, 70.

Concluding comment

Australia's Royal Commission into Institutional Responses to Child Sexual Abuse, conducted mainly in the public eye over a period of five years, has produced a watershed moment for religious organisations in Australia. The recent release of the Pennsylvania grand jury report created a global tipping point for the Catholic Church (only reinforced by the leaking of the German Bishops Report), and now places the ACBC and CRA response in an international context, with the episcopacy and the People of God looking to the Vatican for leadership. The meeting in February 2019 of the presidents of all the church's conferences of Bishops, and the announcements for action that follow will be a critical step in restoring confidence amongst the faithful and broader civil society.

The evil goes beyond Australia and beyond child sexual abuse, because the deeds perpetrated were able to flourish due to systemic institutional deficiencies of culture, governance and management in a global institution. Watching to see the response are the victims and survivors of child sexual abuse and their families, the faithful who remain affiliated, the volunteers and professionals who work for church agencies, the broader Australian community, and sections of the global community. There are green shoots emerging from this wasteland of poor practice – formal responses and local initiatives are promising. I hope and pray for wise discernment, courageous leadership and good judgement.

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