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Religion after the Royal Commission: Challenges to Religion–State Relations

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Abstract: The findings and recommendations emanating from the Australian Royal Commission into Institutional Responses to Child Sexual Abuse (2012–2017) have advised religious organisations that they need to undertake significant changes to legal, governance and cultural/theological practices. The reason for urgency in enacting these changes is that religious organisations were the least child safe institutions across all Australian organisations, with poor practices of transparency, accountability and responsibility coupled with a tendency to protect the reputation of the institution above the safety of children in their care. In Australia, new state laws have been enacted and are impacting on the internal governance systems of religious organisations, including removing the secrecy of the Catholic confessional, instituting mandatory reporting of child abuse by clerics and criminalising the failure to report child sexual abuse. Religious organisations have moved to adopt many of the recommendations regarding their troubled governance including the professionalisation of religious ministry; adoption of professional standards; and appropriate redress for survivors and changes to religious laws. However, these changes signal significant challenges to current church–state relations, which have been characterised by positioning religious organisations as special institutions that enjoy exemptions from certain human rights legislation, on the basis of protecting religious freedom. This article examines and evaluates the nexus between state and religion in Australian public life as it is emerging in a post-Royal Commission environment, and in particular contested claims around the meaning and value of religious freedom versus the necessity of institutional reform to ensure that religious organisations can demonstrate safety for children and other vulnerable groups.

Keywords: public inquiry recommendations; institutional child sexual abuse; clergy abuse; church–state relations; freedom of religion

1. Introduction

The sexual abuse of a child is intolerable in a civilised society. It is the responsibility of our entire community to acknowledge that children are vulnerable to abuse. We must each resolve that we will do what we can to protect them. The tragic impact of abuse for individuals and through them our entire society demands nothing less. ([Australian Government 2017b](#), p. 4)

The *Australian Royal Commission into Institutional Responses to Child Sexual Abuse*¹ (2012–2017) was the longest, largest, and highest funded public inquiry into historical institutional child sexual abuse in Australian history ([McPhillips 2018a](#)). It is acknowledged as a global landmark inquiry into child sexual abuse and ‘laid bare the sobering reality of institutional child sexual abuse and its profoundly negative impact on individuals, families and communities’ ([Wright et al. 2017](#), p. 1). The Royal

¹ Hereafter, the Royal Commission.

Commission established that for much of the twentieth century many institutions were places of violence and harm, where children were subjected to regimes of psychological, physical, emotional and sexual abuse (Australian Government 2017f, 2017h). This period of Australian history has been brought to light through the Royal Commission and the public inquiries that preceded it (Swain 2015). Swain (2015, p. 290) notes that there were many public and internal inquiries into the abuse of children in institutions—up to 80 state inquiries between 1870 and 1990—but they were largely ineffectual in challenging organisational cultures and the poor status of children.

The Final Report of the Royal Commission (17 Volumes, 2017; Australian Government 2017c, 2017m) stated clearly that evidence collected during the five-year tenure of the Royal Commission indicated that both historical and current institutions in Australian public life were unsafe places for children (Australian Government 2017g, p. 239). The Report was based on the evidence that it had collected from public and private hearings (Australian Government 2017f), as well as over 30 expert research reports, which produced high-quality, up-to-date reportage that made a significant contribution to: knowledge about the impacts of child sexual abuse on victims, families and communities; establishing the institutional patterns and bureaucratic technologies of managing disclosures of abuse and dealing with perpetrators; exploring the treatment of child victims in both institutions and court systems; and establishing best practice for ensuring child safety in organisations (Australian Government 2017e).²

The Royal Commission produced more than 400 recommendations, which were designed to address child safety through a variety of policy and legal measures, as well as changes to the culture of institutions (Australian Government 2017a, 2017c). Many of the affected institutions have begun to respond to these recommendations by implementing a raft of changes.

One group of institutions—religious organisations—were at the centre of the work of the Royal Commission, where much of the reporting of historic child sexual abuse allegations took place. Indeed, the Royal Commission was largely initiated in response to the widespread and significant levels of abuse reported in religious organisations (Australian Government 2017i, p. 83). Religious groups represented 60 percent of all organisations who gave evidence at the Royal Commission (McPhillips 2018a, p. 116) and they were the largest group of organisations against which complaints were made via the Royal Commission communication channels. During the tenure of the Royal Commission (2012–2017), these organisations were required to account for their poor organisational response to disclosures of child sexual abuse, management of perpetrators and poor care of victims. Of this group, the Catholic Church represented the largest number of schools, parishes, and out of home care sites where children were harmed, and there was a catastrophic failure to respond to the criminal activity of offenders (Australian Government 2017b, p. 11). For religious organisations, the need to preserve the reputation of the institution above the care of children was paramount and became an institutional imperative embedded in the bureaucratic mechanisms of organisational management (Doyle 2017; Salter 2018).

Prior to the Royal Commission, data regarding the incidence and nature of child sexual abuse in religious organisations was minimal and the phenomenon largely under-studied (Australian Government 2017i, p. 15). Religious institutions themselves had not engaged in effective investigation or research and, where they did, results were not made public. This is despite the fact that the phenomenon of child sexual abuse in religious organisations has been known and managed since at least the middle of the nineteenth century in Australia (Australian Government 2017i, p. 15).

Overall impacts and incidence of abuse in religious organisations will most likely never be known, with most victims never reporting their experiences:

We do not know exactly how many children have experienced sexual abuse in religious institutions in Australia. Many survivors take years or even decades to disclose that they

² For details of all research reports, see <https://www.childabuseroyalcommission.gov.au/research>.

have been sexually abused, and some may never tell anyone. However, it is clear that thousands of children have been affected. (Australian Government 2017i, p. 15)

The Royal Commission Final Report (Australian Government 2017i) notes that there were more complaints and allegations of child sexual abuse in religious institutions than in any other type of organisation (Australian Government 2017d; 2017i, p. 11; McPhillips 2018a, p. 129). Of those who attended private sessions, 4029 survivors—or more than 58.6 percent of all those who attended private sessions—disclosed their accounts of child sexual abuse in 1691 religious organisations (Australian Government 2017i, pp. 9, 13). The Catholic Church had the highest number of complaints, followed by the Anglican Church and the Salvation Army. Smaller religious groups included the Jehovah's Witnesses, Australian Christian Churches (Hillsong), affiliated Pentecostal Churches, Yeshiva Orthodox Jewish schools, and Australian Indigenous Ministries (Australian Government 2017i, p. 13).

Although much of this can be deemed as historical abuse, the Royal Commission warns that it would be a mistake to assume that this form of violence against children is now in the past: 'Some of the abuse we heard about was recent. More than 200 survivors told us they had experienced child sexual abuse in a religious institution since 1990' (Australian Government 2017i, p. 11).

Volume 16 notes the common features that religious organisations shared in responding to complaints of child sexual abuse as being:

the denial or minimisation of child sexual abuse; failures to report alleged perpetrators to civil authorities; transferring alleged perpetrators between institutions or locations; acting to minimise public scandal and limit legal and financial liability; and failures to appreciate the impacts of child sexual abuse on victims. (Australian Government 2017i, p. 14)

Thus, at the conclusion of the Royal Commission, it would be fair to say that the reputation of religious organisations, particularly the Catholic Church, had been seriously affected by the revelation and extent of child abuse that took place in the very institutions that were mandated to care for those sectors of the population that were vulnerable and in need of welfare. It would also be fair to argue that one of the central problems characterising religious institutions and uncovered by the Royal Commission—a lack of organisational transparency, poor accountability and the concentration of power in the hands of (largely) clerical men—was facilitated by the secular state and its particular relationship with religious organisations (McPhillips 2015; Thornton and Luker 2009).

2. The Distinctiveness of Religious Institutions

Throughout the twentieth century, religious institutions played a significant role in Australian society, providing welfare and educational opportunities for children (Bouma 2009). Commonly, children were involved in religious activities via parishes and schools, out of home care institutions and worship settings (Australian Government 2017i, p. 13). Indigenous children were cared for in religious institutions in numerous ways, including being removed from their families and placed in Christian Missions, as well as orphanages (Australian Government 2017i, p. 14). Hundreds of thousands of children were educated and cared for in religious institutions and it can be strongly argued that religion played a major role in the development of the Australian social welfare system (Bouma 2009; Swain 2018, p. 153) and continues to do so today.

The particular issue at play with religious organisations, as opposed to secular organisations, is that they are positioned as “special” institutions in Australian public life, enjoying certain legal, cultural and economic privileges legitimated by the state (McPhillips 2015; Thornton and Luker 2009). These privileges are embedded in the constitutional right to freedom of religious belief and expression and comprise an important and characteristic historical treatment of religious organisations in modern western democratic states (McPhillips 2015). Privileges accorded to religious organisations include tax exemptions for various kinds of financial income for organisations legally recognised as charities (most established religious groups), and recognition that the laws and legal courts of religious organisations have jurisdiction over internal matters, including the regulation of marriage and responses to allegations

of child sexual abuse (Doyle 2017; Tapsell 2018a). A final privilege that the state confers on religious groups is that within federal and state human rights laws, exemptions are permitted that allow selected organisations to discriminate on the basis of employment and training.³ In religious organisations, many of these exemptions are gender-based, for example, the right to refuse employment to LGBTQI+ cohorts or single mothers, or the right to refuse to ordain women to the priesthood (and to other positions of authority) in the Catholic Church because they contravene normative moral and theological principles relating to gender and leadership (McPhillips 2015; Thornton and Luker 2009). In general, the state has accepted this reasoning that as traditions with long histories of established codes of social behaviour and legal provisions authorised by the higher power of transcendent deities, religious organisations are unable to meet some of the legal requirements of modern democratic, secular states (McPhillips 2015). Hence, the ongoing state approval of exemptions for these groups to maintain their distinctiveness and traditions is protected in federal human rights law (Bouma et al. 2011).

In 2012, the federal government undertook a review of the Human Rights legislation and invited submissions from the public (Australian Government 2012). Of the hundreds of submissions received, many were from religious groups insisting on the importance of the exemptions remaining intact, to preserve historical and theological tradition. Some of the more liberal religious groups, in particular the Uniting Church, argued against this, making the case that religious groups should not be exempt from any human rights laws (Uniting Church Australia 2011). Following the review, it was recommended that no changes be made to the existing laws with regard to federal exemptions. Hence, the beginning of the Royal Commission coincided with this reiteration and support of the distinctiveness of religious institutions in Australian institutional life.

In 2017, following the publication of the Royal Commission's Final Report and list of recommendations relating to religious organisations, the terrain shifted significantly, with evidence that religious institutions exhibited the following characteristics: poor organisational accountability and transparency; protection of offenders; unjust treatment of victims of child sexual abuse; and patriarchal culture and theology (Australian Government 2017i, p. 12). Religious laws and law courts were often used to stymie applications for redress and reinforce institutional power (Australian Government 2017i, pp. 175–77; Doyle 2017, p. 104; Tapsell 2018a, pp. 144–45). By early 2018, a number of states (NSW, Victoria, SA) began to respond to the Royal Commission recommendations by enacting laws designed to protect children and identify religious practices that were implicated in putting children at risk. This has put the state and church at loggerheads with regard to (a) challenging the “rights” of religions to special privileges in the law, and (b) enacting state laws that directly encroach on religious laws and practices, which have been responsible for protecting perpetrators and failing to keep children safe (Schmalz 2019). In particular, the decision by a number of high ranking Catholic bishops not to abide by recent state laws passed in Victoria and Tasmania that make it a legal mandate for any priest hearing a confession of child sexual abuse to report this to the police is of concern. What are the likely outcomes of this new territory in state-church relations? Will this result in challenges to the claims and privileges of religious traditions by the state? Or will the state accept the rights of religions to particular religious laws and practices as acceptable? The answer to this, I argue, is to be found in the response of both state and federal the governments to the recommendations of the Royal Commission.

3. Public Inquiry Recommendation Processes

Although designated as semi-autonomous government bodies, it can be argued that public inquiries are important structural mechanisms for delivering redress and restorative justice to affected cohorts of victims who have suffered significant levels of discrimination (Smaal et al. 2016; Wright 2017).

³ The right to exemptions pertains not only to religious organisations—although they constitute the largest group in the exemption category—but to any group which can demonstrate that its authenticity as an organisation requires specific employment conditions (McPhillips 2015).

Wright argues that, while public inquiries have a number of complex roles, their ‘primary function . . . is widely acknowledged as learning lessons from past events to inform the future’ (Wright 2017, p. 11). Importantly, public inquiries, and particularly Royal Commissions, reconfigure historical narratives by redefining the central problematics and producing new knowledge. The Australian Royal Commission made a significant contribution to:

the reconfiguration of history, both in relation to perceived understandings of childhood and the once revered institutions that were charged with the care of children who could not be looked after by their families. (Wright 2017, p. 12)

The central mechanism for change is the delivery of a suite of recommendations aimed at addressing and correcting poor institutional culture and practice and, as such, a central role of the Royal Commission was the delivery of more than 400 recommendations covering four main areas: ‘policy, legislative, administrative or structural reforms’ (Australian Government 2017i, p. 71). Recommendations include new child safe measures for institutions; improved responding and reporting processes for institutions; improvements to advocacy and therapeutic treatment services; criminal justice and civil legal recommendations and specific recommendations for particular types of institutions regarding institutional culture and change processes (Australian Government 2017a).

Since the Final Report was published in December 2017, responses from state and federal government to the Royal Commission recommendations have been rolling out slowly and unevenly, with the establishment in 2018 of an Interjurisdictional Working Group, the National Redress Scheme, a National Framework for Protecting Australia’s Children 2009–2020, a new National Office for Child Safety, and National Principles for Child Safe Organisations.⁴ A National Apology was made in October 2018 in Federal and State Parliaments.⁵ Across the state jurisdictions, there have been changes and reforms to civil and criminal laws. For example, in NSW, Victoria, Tasmania and Queensland, new civil laws passed in 2018 codify the institutional liability of organisations in relation to child sexual abuse⁶ and, in all states, new criminal laws have been introduced that provide longer sentences for crimes of perpetration, the grooming of children as well as failures to report and protect children.⁷ While there is much to be applauded in the state and federal government uptake of the Royal Commission recommendations, there have also been significant problems with the federal government’s adoption of the recommendations. In particular, the National Redress Scheme has been beset with problems and has been assessed by experts as a dismal failure (Daly and Davis 2019).

With regard to the 57 recommendations for religious organisations, the Royal Commission made a number of general recommendations as well as specific recommendations for particular religious institutions focused largely around legal, organisational, cultural and theological change (Australian Government 2017i, pp. 71–82). The Commission stated that:

The recommendations focus on factors that we identified as contributing to the occurrence of child sexual abuse in religious institutions and to inadequate institutional responses. Some relate to governance, internal culture and underlying theological and scriptural beliefs and practices. (Australian Government 2017i, p. 12)

A number of the recommendations around organisational regulation and legislative change require both state and federal governments to implement new laws that both prevent child abuse in religious organisations, as well as ensuring effective responses when it does occur

⁴ For details, see The Australian Government Responses to the Royal Commission into Institutional Responses to Child Sexual Abuse website at <https://www.childabuseroyalcommissionresponse.gov.au/government-response/role-states-and-territories>.

⁵ For details, see the National Apology to Victims and Survivors of Institutional Child Sexual Abuse at <https://www.pm.gov.au/media/national-apology-victims-and-survivors-institutional-child-sexual-abuse>.

⁶ For example, see the NSW 2018 state legislation at <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3559>.

⁷ For example, see the NSW government changes to historic institutional child sexual abuse laws (2018) at <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/historic-new-laws-on-child-sex-abuse.aspx>.

([Australian Government 2017i](#), p. 71). Hence, this implies that the state has assumed responsibility for ensuring that religious organisations are held accountable for their internal modes of organisation. This represents a significant shift from established patterns of religion–state arrangements where the internal practices, structure and management of religious organisations are framed as largely internal matters. Historically, Australian secularism has framed religious beliefs and institutional arrangements as based on principles of “faith tradition” and such traditions have been widely accepted by the secular state ([Thornton and Luker 2009](#)). However, with the Royal Commission, the ground has now shifted in this regard, with the state now actively engaged in regulation processes of the internal organisation of religious institutions via recommendations from the Royal Commission. As the Final Report stated:

While positive reforms are underway in some religious institutions, there is still much progress to be made before the community can be confident that all religious institutions in Australia are as safe as possible for children. ([Australian Government 2017i](#), p. 12)

In line with the recommendation format, I have classified the recommendations made to religious organisations into three categories: legal; governance; and culture/theological beliefs, and I discuss these below. I argue that the recommendations, if enacted as advised by the Royal Commission, would unsettle and challenge current church–state relations and shift the ground of responsibilities between these institutions into new territory. Two examples involving the Catholic Church demonstrate the unsettled nature of how recommendations will impact the historical accord between church and state.

4. Recommendations for Religious Organisations

The Royal Commission had a particular focus on religious organisations, partly because previous inquiries had identified these kinds of organisations as sites where there were significant levels of complaints and inadequate responses to claims of abuse ([Australian Government 2017i](#), p. 83). Hence, there was an historical precedent for including religious organisations in the remit of investigation and this proved to be correct with the Royal Commission noting that the allegations of child sexual abuse reported to the Commission were the highest of any organisational type:

During our inquiry we received more allegations of child sexual abuse in relation to institutions managed by religious organisations than any other management type. Many victims, survivors and their family members and representatives told us about the devastating impacts of the sexual abuse and of poor institutional responses. They spoke about the need for systemic changes to ensure that children engaging with religious institutions would be better protected in future. ([Australian Government 2017i](#), p. 84)

In particular, the Catholic Church was identified as having a particular problem with child sexual abuse through historical records and previous inquiries ([Australian Government 2017i](#), p. 86). Indeed, the two Australian state inquiries that immediately preceded the Royal Commission—the Victorian Parliamentary Inquiry into Institutional Child Abuse ([Family and Community Development Committee 2013](#)) and the NSW Special Commission of Inquiry ([NSW Government 2014](#))—both investigated the incidence of child sexual abuse in Catholic Church settings.

The Royal Commission made 57 recommendations for religious institutions, 27 of which were general and directed to all religious groups and 30 of which were directed to individual religious groups. Of this group, five recommendations were directed to the Anglican Church, 21 recommendations to the Catholic church, three recommendations to the Jehovah’s Witness organisation and one recommendation to all Jewish organisations ([Australian Government 2017a](#), pp. 50–60).

The recommendations mainly relate to governance and policy and are aimed at ensuring that religious institutions become child safe places. However, it is difficult to separate out governance practices from cultural and theological practices, as many of the policies and management arrangements are bound to religious and theological principles. For example, in the Anglican and Catholic

Churches, there was a culture of clericalism that positioned male clerics as superior to lay people (Australian Government 2017j, pp. 612–63; McPhillips 2016). Combined with extensive powers over parish administration and theological discourse, this meant that ordained clergy had significant powers at management level and would rarely be questioned due to a culture of submissiveness and deference (Salter 2018, p. 248). Decisions could be made that were difficult to challenge, there were few checks and balances in bureaucratic systems, and they did not protect children. Instead, governance functions were aimed towards the protection of institutional reputation and the clerical class (Salter 2018, p. 249). As the Final Report notes:

Independent, autonomous or decentralised governance structures often served to protect leaders of religious institutions from being scrutinised or held accountable for their actions, or lack of action, in responding to child sexual abuse. (Australian Government 2017j, p. 29)

Many of the general recommendations for religious organisations act to counter the power of clerics and bureaucratic secrecy by requiring that governance processes and policy reflect the 10 Child Safe Standards proposed and sanctioned by the Royal Commission (Australian Government 2017g).

Likewise, there was a significant crossover between governance and religious law. For example, in the conservative Jewish Yeshiva campuses in Bondi and Melbourne, reporting of sexual abuse was forbidden due to the law of *mesirah*, which prevented any communication with civil authorities (Tapsell 2018a, p. 144; Australian Government 2017k, p. 169). In Jehovah's Witnesses, an interpretation of the biblical text Corinthians 6:1–8 prohibited reporting of abuse to civil authorities, only allowing an exception where the civil law required it (Tapsell 2018a; Australian Government 2017k, pp. 83, 100, 106). In the Catholic Church, a canon law mandated in 1917 and noted in the Instruction *Crimen Sollicitationis* (1922) made it unlawful for any priest to report instances of child sexual abuse and relegated such knowledge to the category of a secret (Tapsell 2018a, pp. 148–49; Australian Government 2017i, p. 77). Tapsell states:

It was a secret law that was not to be published or commented on by canonists (Pius XI 1922, Final Report Vol 16, Bk 2: 52). The Instruction imposed the 'secret of the Holy Office,' a permanent silence on all information obtained by the Church in its inquiries and trials for the four mentioned canonical crimes. There was no exception for reporting to the civil authorities. Victims and witnesses were also sworn to secrecy. Any breach of the pontifical secret meant automatic excommunication from the Church, which could only be lifted by the pope personally. (Tapsell 2018a, p. 149)

The Royal Commission noted many times that the cultures of those religious groups most impacted by the abuse of children shared similar features—they were hierarchical and patriarchal in character with a clear lack of lay leadership and particularly dismissive of women's leadership (Australian Government 2017i, pp. 27–29). They positioned themselves theologically and morally, outside of civil society and its legal and cultural codes, often viewing civil society and the values of secularism as morally repugnant. While not suggesting that religious groups secularise, the Royal Commission concluded that significant reforms across the field of organisational culture were essential for meaningful change:

Internal laws or specific scriptural, doctrinal or theological principles present an ongoing obstacle to the reforms needed to ensure that children are safe from sexual abuse in religious institutions. (Australian Government 2017i, p. 29)

The Table 1 below is a schematic representation of the three main areas of religious institutional practice addressed by the recommendations (Australian Government 2017i). Legal recommendations address the adaption of and change to religious laws, and compliance with state civil and criminal laws, such as the mandatory reporting of child abuse. Recommendations related to governance cover policy adaption and implementation, improved forms of accountability, implementation of child

safe standards and mandatory codes of professional conduct, improved selection and training of religious leaders, establishment of independent evaluation processes and management of complaints and convictions. Recommendations related to cultural and theological issues involve any significant challenges to existing practices that are informed and shaped by cultural and theological elements. For example, recommendation 16.24 refers to conducting a national review of formation programs for religious ensuring that they do not develop clericalist attitudes. As noted above, clericalism has been identified as a major issue for the Catholic Church and as a cause of child sexual abuse (Australian Government 2017j, pp. 612–43; McPhillips 2016) and has been embedded in the power relations and theological practices of the Church for hundreds of years (Doyle 2017). Hence, changes to this practice will involve cultural and theological innovations to ensure new processes of religious leadership formation and a reformulation of the theology of priesthood.

Table 1. Recommendations to religious organisations by classification of legal/governance/cultural theological areas.

| | Legal | Governance | Cultural Theological |
|-----------------------------|---|--|---|
| Anglican | | 16.1 16.2 16.4 16.5 | 16.1 16.3 |
| | 16.9, 16.10 16.11 16.12 16.13 | | |
| Catholic | 16.1 16.15 16.6 16.7 16.26 | 16.6 16.7 16.8 16.15 16.6 16.8 16.9 16.20 16.21 16.22 16.23 16.24 16.25 16.26 | 16.6 16.7 16.8 16.9 16.20 16.23 16.24 |
| Jehovah's Witness | 16.27 | 16.28 | 16.28 16.29 |
| Jewish Organisations | 16.30 | 16.30 | |
| | | 16.31 16.33 16.34 16.35 16.37 16.38 16.39 | |
| General | 16.32 16.48 16.52 16.53 16.55 16.56 | 16.40 16.41 16.42 16.43 16.44 16.45 16.46 16.47 16.48 16.49 16.50 16.51 16.52 16.54 16.55 16.56 16.57 16.58 | 16.37 16.38 16.40 16.45 16.48 16.49 16.54 16.55 16.56 |

Note. For specific details, see Volume 6 Recommendations of the Final Report (Australian Government 2017g, pp. 50–60).

A number of recommendations are relevant to more than one category. For example, recommendation 16.48 applies to all religious organisations with regard to the rite of religious confession for children. The recommendation requires the ritual to be performed within view of another adult or not at all. This is a governance issue but also an issue related to religious law that may need to be amended and to theological and cultural adaptations of the rite. Recommendation 16.55 stipulates that where a complaint is substantiated, or a criminal conviction found against a person in religious ministry, they should be prohibited from adaption any kind of religious authority. This is an issue pertaining to state (and possibly religious) law but also to policy and cultural change, as evidence has shown that perpetrators were protected by institutions as part of the cultural practices of institutions.

The recommendations are also focused on ensuring independent and regular review of governance and policy and this involves inevitably closer relations and compliance with secular bodies. Compliance to state laws regarding reporting, evaluation and management of complaints will mean that for most religious organisations, new policies and cultural attitudes to formation and leadership will be required. Cultural shifts in the way in which religious organisations select and train leaders and ministers could involve significant theological reflection and cultural change.

5. Conclusions: Two Challenges to Religion–State Relations

It is clear that the Royal Commission's recommendations, if implemented as written, would change the ways in which religious organisations operate as faith traditions. They would look much more like secular institutions, with embedded systems of transparency and accountability, regulated and equitable leadership practices and the professionalisation of the priesthood, to name a few. The question is: how are religious organisations managing the adoption of recommendations and is this process resulting in cultural and institutional change?

While the space to examine and evaluate the uptake of recommendations is not within the remit of this article, I will conclude with two examples that reflect the difficulty that religious organisations are experiencing in translating and implementing specific recommendations. Both of these examples point to significant changes in the character of church–state relations and raise the question of what kind of institutions faith traditions will become and how much power the state will have over the internal management of religious groups.

Both examples concern the Catholic Church. First, as part of its promise to the Royal Commission in Case Study 50 ([Australian Government 2017](#)) to develop a new and independent system of Professional Standards for employees and members of the Catholic Church, representatives for the Church established a new body—Catholic Professional Standards Limited (CPSL 2018)—which would oversee the implementation of the national child safeguarding standards into Catholic organisations and also audit compliance with the standards. In its information about the organisation it states that:

CPSL was established by the Australian Catholic Bishops Conference and Catholic Religious Australia. It operates independently of the Church. There are no bishops, priests or religious brothers or sisters on the CPSL Board. CPSL board directors are lay people with professional expertise in the fields of law, education, human services, safeguarding and regulation. ([Catholic Professional Standards Limited 2019](#))

Nevertheless, recalling that in Case Study 50, the Royal Commission advised the Catholic Church that it should never again investigate itself and that professional standards should be formulated independently of Church leadership, the current arrangement of CPSL is clearly in breach of this recommendation. First, the CPSL is funded by and has two members: the Australian Catholic Bishops Conference and Catholic Religious Australia⁸. Second, many of the current staff in positions of responsibility have worked across numerous Catholic organisations prior to employment in the CPSL (see CPSL website). It is, therefore, not possible to claim that the CPSL 'works independently of the Church'. Clearly, this organisation is related to the Church, funded by Church leaders and thus in danger of being impacted by the very cultural and governmental practices that were identified as problematic by the Royal Commission. In her submission to the CPSL in 2018, Kathleen [McPhillips \(2018b\)](#) notes that:

The structure of CPSL is that of an incorporate body with two members, The Australian Catholic Bishops Conference (ACBC) and Catholic Religious Australia (CRA). The two-member organisation has four representatives and appointed the current Chairperson of the Board. The Board is comprised of experts across the field of child safety and protection and includes a number of appointments who have close associations with Catholic organisations both recent and current, including the Chief Executive Officer who has a recent background in Catholic care.

The Board meets with the Member group twice a year and the Member group provides financial support to the work of the CPSL.

⁸ See <https://www.cpsltd.org.au/about-us/governance/>.

Therefore, the claim that CPSL is independent from the Church is not sustainable and a more suitable term for the relationship between the Member organisation and the board should be sought.

In his submission to the CPSL in July 2018, lawyer Kieran Tapsell notes that as currently constituted, the CPSL guidelines (6.3) leave in place the canon law obligations, which state that mandatory reporting laws for employees of the Church must abide by the Vatican's canon law *Sacramentorum Sanctitatis Tutela* (2010) which 'imposes the pontifical secret to all allegations involving clerics. The protocol could have mandatory reporting for school teachers and other employees of the Church, but not for clerics' (Tapsell 2018b, p. 2). Tapsell argues:

CPSL claims that it is "responding" to the Royal Commission's findings, and that it will "foster a culture of protecting children and upholding children's rights." Yet, Standard 6.3 states that it will follow canon law, and that means covering up child sexual abuse in every State and Territory other than New South Wales and Victoria where allegations of child sexual abuse are made against clergy. An independent CPSL would make it clear in its "standards" that it will not comply with the pontifical secret over child sexual abuse by clergy and will report all allegations of child sexual abuse to the civil authorities irrespective of any civil law obligation to do so. (Tapsell 2018b, p. 3)

Thus the current iteration of CPSL standards is not only in breach of the Royal Commission recommendations (Australian Government 2017i, Recommendation 16.10 p. 72) and advice but also reconstitutes the very issues of secrecy and self-investigation that were responsible for much of the governance dysfunction in managing the child sexual abuse crisis.

The second example refers to the response by the Catholic religious leadership to the Royal Commission recommendation 16.26 (Australian Government 2017i, p. 77) relating to mandatory reporting of child sexual abuse across all professional jurisdictions. This has brought into the firing line the rite of the Catholic confessional where currently it is protected by a sacred seal of secrecy. Complying with the recommendation would involve removing the seal and ensuring that any disclosures of child sexual abuse heard in the confessional would be reported to church and civil authorities as per secular mandatory reporting requirements. Despite advice from its own Truth Justice and Healing Council⁹, in August 2018, the president of the Australian Catholic Bishops Conference (ACBC) archbishop Mark Coleridge defended the secrecy of the Confessional on the basis of religious freedom and stated that they would not comply with this recommendation as it constituted 'bad public policy' (McCarthy 2018).

By September 2019, the Australian Capital Territory (ACT), South Australia, Victoria and Tasmania had passed laws that compel ministers of religion to report allegations of child sexual abuse to police and where found guilty of not doing so face a custodial sentence. NSW and Queensland are preparing to implement similar laws.

Given that the episcopal leaders of the Catholic Church have stated that they will not comply with such laws, this is clearly positioning the Church leadership in a difficult situation with secular authorities. Claims that such laws impact on religious freedom are highly contested given that the outcomes could have disastrous effects on the safety and well-being of children.

The Royal Commission has been instrumental in reframing the relationship between religion and state in Australia, and it is yet to be seen how the uptake and implementation of the recommendations will affect this relationship in future years. But, for now, it remains contested and unsettled.

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⁹ The Truth Justice and Healing Council was established in 2013 to represent and give advice to the Catholic Church in its dealings with the Royal Commission, See <http://www.tjhcouncil.org.au>.

References

- Australian Government. 2012. Commonwealth Anti-Discrimination Law Reforms, Exposure Draft Human Rights and Anti-Discrimination Bill. Available online: <http://www.ag.gov.au/Consultations/Pages/ConsolidationofCommonwealthanti-discriminationlaws.aspx> (accessed on 2 October 2019).
- Australian Government. 2017a. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Recommendations. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/recommendations> (accessed on 2 October 2019).
- Australian Government. 2017b. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Preface and Executive Summary. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_preface_and_executive_summary.pdf (accessed on 2 October 2019).
- Australian Government. 2017c. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 1: Our Inquiry. In *Final report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_1_our_inquiry.pdf (accessed on 2 October 2019).
- Australian Government. 2017d. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 3: Impacts. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/impacts> (accessed on 2 October 2019).
- Australian Government. 2017e. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 4: Identifying and Disclosing Child Sexual Abuse. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse> (accessed on 2 October 2019).
- Australian Government. 2017f. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 5: Private Sessions. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/final-report-private-sessions> (accessed on 2 October 2019).
- Australian Government. 2017g. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 6: Making Institutions Child Safe. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/making-institutions-child-safe> (accessed on 2 October 2019).
- Australian Government. 2017h. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. In *Message to Australia*. Available online: <https://www.childabuseroyalcommission.gov.au/message-australia> (accessed on 2 October 2019).
- Australian Government. 2017i. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 16: Book 1 Religious Institutions. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/religious-institutions> (accessed on 2 October 2019).
- Australian Government. 2017j. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 16: Book 2 Religious Institutions. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/religious-institutions> (accessed on 2 October 2019).
- Australian Government. 2017k. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Volume 16: Book 3 Religious Institutions. In *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/religious-institutions> (accessed on 2 October 2019).
- Australian Government. 2017l. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. In *Case Study 50 Institutional Review of Catholic Church Authorities*; Canberra: Commonwealth of Australia.

- Available online: <https://www.childabuseroyalcommission.gov.au/case-studies/case-study-50-institutional-review-catholic-church-authorities> (accessed on 2 October 2019).
- Australian Government. 2017m. *Final Report: Australian Royal Commission into Institutional Responses to Child Sexual Abuse*; Canberra: Commonwealth of Australia. Available online: <https://www.childabuseroyalcommission.gov.au/final-report> (accessed on 2 October 2019).
- Bouma, G. 2009. Religion, Spirituality and Australian Social Policy. In *Australian Soul: Australian Spirituality in the Twenty-first Century*. Edited by Gary Bouma. Cambridge: Cambridge University Press, pp. 172–203.
- Bouma, Gary, Desmond Cahill, Hass Dellal, and Athalia Zwartz. 2011. *Freedom of Religion and Belief in 21st Century Australia, A Research Report prepared for the Australian Human Rights Commission*; Melbourne: Catholic Professional Standards Ltd. Available online: <https://www.humanrights.gov.au/our-work/2011-freedom-religion-and-belief-21st-century-australia> (accessed on 15 October 2019).
- Catholic Professional Standards Limited. 2019. Who We Are. Available online: <https://www.cpsltd.org.au/about-us/who-we-are/> (accessed on 12 October 2019).
- Daly, K., and J. Davis. 2019. National Redress Scheme for Child Sexual Abuse Protects Institutions at the Expense of Justice for Survivors. *The Conversation*. March 7. Available online: <https://theconversation.com/national-redress-scheme-for-child-sexual-abuse-protects-institutions-at-the-expense-of-justice-for-survivors-112954> (accessed on 14 October 2019).
- Doyle, Thomas P. 2017. The Royal Commission into Institutional Responses to Child Sexual Abuse and the Roman Catholic Church. *Child Abuse and Neglect* 74: 103–6. [CrossRef] [PubMed]
- Family and Community Development Committee. 2013. *Betrayal of Trust. Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations*. East Melbourne: Parliament of Victoria.
- McCarthy, J. 2018. Australia's Most Senior Bishop Defends the Seal of Confession and mandatory Celibacy in Royal Commission Response. *The Newcastle Herald*. August 31. Available online: <https://www.newcastleherald.com.au/story/5619522/catholic-church-rejects-own-report-says-no-to-confession-reform/> (accessed on 1 September 2018).
- McPhillips, Kathleen. 2015. Whose Rights Matter? Women's Rights, Anti-Discrimination Legislation and the Case of Religious Exemptions. In *Religion after Secularization in Australia*. Edited by Timothy Stanley. New York: Palgrave MacMillan, pp. 119–35.
- McPhillips, Kathleen. 2016. The Church, the Commission and the Search for Truth. *Journal for the Academic Study of Religion* 29: 30–51. [CrossRef]
- McPhillips, Kathleen. 2018a. Silence, Secrecy and Power: Understanding the Royal Commission Findings in the Failure to Protect Children in Religious Organisations. *Journal for the Academic Study of Religion* 31: 116–42. [CrossRef]
- McPhillips. 2018b. *Submission to CPSL*, July. unpublished.
- NSW Government. 2014. *Special Commission of Inquiry into Matters Relating to the Police Investigation of Certain Child Sexual Abuse Allegations in the Catholic Diocese of Maitland-Newcastle*; Report. Sydney: NSW Government. Available online: http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/pages/sisa_index (accessed on 12 October 2019).
- Salter, Michael. 2018. Abuse and Cruelty in Religious Bureaucracy: The Case of the Anglican Diocese of Newcastle. *Journal of Australian Studies* 42: 243–55. [CrossRef]
- Schmalz, M. 2019. Why Ending the Secrecy of Confession Is So Controversial for the Catholic Church. *The Conversation*. October 10. Available online: <https://theconversation.com/why-ending-the-secrecy-of-confession-is-so-controversial-for-the-catholic-church-112391> (accessed on 15 October 2019).
- Smaal, Yorick, Andy Kaladelfos, and Mark Finnane. 2016. *The Sexual Abuse of Children: Recognition and Redress*. Melbourne: Monash University Publishing.
- Swain, Shurlee. 2015. Giving Voice to Narratives of Institutional Sex Abuse. *Australian Feminist Law Journal* 41: 289–304. [CrossRef]
- Swain, Shurlee. 2018. Institutional Abuse: A Long History. *Journal of Australian Studies* 42: 153–63. [CrossRef]
- Tapsell, Kieran. 2018a. Civil and Canon Law on Reporting Child Sexual Abuse to Civil Authorities. *Journal for the Academic Study of Religion* 31: 143–64. [CrossRef]
- Tapsell, K. 2018b. *Submission to CPSL*, July. Unpublished.
- Thornton, Margaret, and Trish Luker. 2009. The Spectral Ground: Religious Belief Discrimination. *Macquarie Law Journal* 9: 71–91.

- Uniting Church Australia. 2011. *Comments to the Attorney Generals Department on The Consolidation of Australia's Anti-Discrimination Legislation*. Sydney: Uniting Church in Australia.
- Wright, K. 2017. Remaking Collective Knowledge: An Analysis of the Complex and Multiple Effects of Inquiries into Institutional Child Abuse. *Child Abuse & Neglect* 74: 10–22.
- Wright, K., S. Swain, and K. McPhillips. 2017. The Australian Royal Commission into Institutional Responses to Child Sexual Abuse. *Child Abuse and Neglect* 74: 1–9. [[CrossRef](#)]



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