

Keynote Address

Best Practice in the Governance of Catholic Agencies

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Words are no longer enough...For me over the years it's been a journey from seeing abuse as a sin, to seeing it as a crime and then finally seeing it as a culture – by which I mean abuse and its cover-up were aggravated, and probably caused, by cultural elements in the Catholic church. It took me a long time to see that and to see therefore the need for cultural change if we are to go to the root of the crisis and not just treat the symptoms' Archbishop Mark Coleridge, 19 February 2019

This is a big ship to turn around.' Fr Hans Zollner SJ, 24 February 2019

1. Introduction and Context

1.1 Church context

When I spoke at the *Health and Integrity in Church Ministry Conference* in Melbourne in August last year, I had to rewrite the original version sent to the panel participants due to the rapidly changing context; most notably the Australian Catholic Bishops conference (ACBC) and the Catholic Religious Australia (CRA) announcing on 31 August 2018 their response to their own *Truth, Justice and Healing Council's* (TJHC) response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA).

Conference organisers have once again provided a dynamic context for the writing of this paper with the conduct of the Vatican's first global summit on the protection of minors in the Church for Presidents of Bishops' Conferences conducted from 21 – 24 February in Rome. While the theme of the summit has been strongly on child safety and protecting minors from sexual abuse, the governance principles of transparency, accountability and responsibility have permeated much of the discussion (judging from media reports and quotes from episcopal attendees).

In preparation for the Vatican Summit, the Leadership Roundtable in the US convened a *Catholic Partnership Summit* in Washington DC on 1-2 February 2019 to address 'the twin crises: the crisis of sexual abuse and the crisis of leadership failures that covered up the

abuse'. The report from that summit contains advice of value to the Catholic Church in Australia.

This workshop is timely from the civil domain as well with release of the revised *Not-for-Profit (NFP) Governance Principles* by the Australian Institute of Company Directors (AICD) on 30 January, the *Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* conducted by Commissioner Kenneth Hayne on 4 February, and the release on 27 February of the fourth edition of the Australian Stock Exchange's (ASX) *Corporate Governance Principles*. Participants might query the relevance of these reports to the Catholic Church. I have argued elsewhere that it is not unreasonable to expect Church agencies to meet the same general governance standards as other corporate entities (government and business) in Australia (Pascoe 2018b).

1.2 Report of Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRSCA)

The renewed focus on governance in the Australian Catholic Church has largely been triggered by the RCIRSCA findings and report released on 15 December 2017. Extracts from the Royal Commission's Summary report illustrate a clear view on inadequacies in organisational structure and governance of the Catholic Church in Australia:

The governance of the Catholic Church is hierarchical... The 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... The hierarchical structure of the Catholic Church created a culture of deferential obedience in which poor responses to child sexual abuse went unchallenged... The exclusion of lay people 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. (RCIRSCA Final Report: Volume 16, Religious institutions Book 2, p 681)

The Royal Commission noted that there was better governance in many church agencies than in diocesan structures. Recommendation 16.7 states:-

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

of Catholic health, community services and education agencies. (RCIRCSA Final Report: Volume 16, Religious institutions Book 2, p 682)

In their response on 31 August 2018 the ACBC and CRA committed to implementing all recommendations except Recommendation 16.26 which would break the seal of the confessional. They have established an Implementation Advisory Group (IAG) chaired by NSW Vincent de Paul CEO, Jack de Groot, and the IAG has created a Governance Review Project Group (of which I am a member) to oversee the review of the governance and management of parishes and dioceses in Australia. This is all happening on tight timeframes due to the benefits of aligning the work to the proceedings of Australia's Plenary Council 2020, (PC2020) due to the keenness of the ACBC and CRA to show progress, and due to meeting the pent up frustration of victims and survivors to see some action.

The governance review will be to:

- a. identify cultural practices that have led to serious and widespread abuse of power
- b. identify the impact that the autonomy of dioceses has had on the development of a nationally consistent response to abusive behaviour
- c. identify principles of governance that will facilitate best practice
- d. identify best practice examples of governance and management in the Australian Church and elsewhere, including regulatory models
- e. draw on and work with world class researchers
- f. recommend changes to governance and management structures to achieve best practice

Whilst the IAG's governance review has been triggered by the ACBC-CRA response to the RCIRCSA's Recommendation 16.7, it is clear that the governance and management structures of the Church in the past have acted as a significant risk factor in the abuse of power beyond child sexual abuse. Evidence has emerged in recent months of the sexual abuse of adult women and men^{iiiiv}(including nuns and seminarians); and the papal summit heard of the failure in many countries to adequately respond to all forms of abusive behaviour, including the destruction of records of abuse,^{vi} or the failure to create them in the first place. Factors identified in the RCIRCSA such as weak transparency and accountability and the paucity of checks and balances in the Church, warrant the governance review looking at factors beyond child safe standards.

1.3 Report of February 2019 US Catholic Leadership Summit

The recent US Catholic Leadership Summit drew together more than 200 Catholic leaders from 43 dioceses, including bishops and abuse survivors. They analysed the twin crises of abuse and leadership failure in the US Church identifying the causes as lack of bishop accountability, clericalism, lack of transparency, lack of co-responsible governance structures, and the need for synodality:

The Catholic Church has historically operated with an insular form of governance. Within the diocesan structure, decisions are made by bishops with little input from others beyond the chancery. Synodality and communication among bishops and with

others are at best limited...(and) there are not structures in place to ensure Church leader hear with candor the needs or expertise of the laity, let alone the anguish and righteous anger of those who have been sexually abused, their families, and communities.

Without being in touch and hearing from others, a pernicious culture of clericalism results in a mentality and actions in which clergy see themselves as separate from other Catholics and put themselves or the institution ahead of the wellbeing of the faithful...Indeed, the twin crises has demonstrated to many that silence is no longer an option, and that the strategy most urgently needed today is transparency, to tell the truth freely and openly. (Report of Catholic Leadership Summit,p 6)

It is telling that the analysis of the US Catholic leadership of the problems within the Church are so similar to the analysis of the RCIRCSA, and it gives a useful basis on which to identify improved governance practice.

1.4 Definition

In this paper I have adopted the legal definition of corporation, rather than the narrower use that equates a corporation operating as a commercial entity:

Corporation. *a group of persons who are deemed in law to be a single legal entity. The corporate entity is legally distinct from its members; it has legal personality and can hold property, sue and be sued in its own name as if it were a natural person.*^{vii}

Arguably the unease of the TJHC and the ACBC-CRA about the RCIRCSA recommendations on governance comes from this differing conception of a 'corporate entity'. In their final analysis report, *Wherefrom and where to: The Truth Justice and Healing Council, the Royal Commission and the Catholic Church in Australia*,^{viii} the TJHC argued there has been some overreach by the Royal Commission. In relation to the section on structure and governance (13.11.4) the TJHC states that:

- *The church's history of handling child sexual abuse has been characterised by poor governance and mismanagement, and the Royal Commission's critique reflects that history.*
- *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 with those of a commercial entity was misconceived. On the otherhand it is hard to argue against the Royal Commission's findings in this area as many Church witnesses agreed that there were gross instances of mismanagement, poor judgement, lack of accountability, and very little transparency in responding to instances of child sexual abuse. (TJHC Analysis Report, 2018, p13)*

1.5 Governance requirements

The TJHC report notes that under Canon Law 129 of the 1983 Code of Canon Law the clergy have jurisdiction to exercise governance in the Catholic Church, not the laity. Further that

the RCIRCSA report references the AICD's *Not-for-Profit Governance Principles*^{ix} as good advice. Given that most church agencies are registered charities or incorporated bodies, reference also needs to be made to the mandatory governance standards^x of the Australian Charities and Not-for-Profits Commission (ACNC) for charities^{xi} or the comparable state standards for incorporated associations.

The problem with the THJC position on structure is that it did not persuasively spelled out why its 'complex theological and ecclesial governance structures' justifies the adoption and compliance with a different standard of behaviour to other entities. Furthermore, even in the past year, our understanding of the problems and possible solutions for the Church has matured with greater hope of enduring improvements. Of more utility now are the commitments of Pope Francis at the beginning and conclusion of the Vatican Summit, and deliberations such as those found in the February 2019 report of the US Catholic Partnership Summit which identifies guiding principles, desired outcomes and key concepts to respond to the twin crises of abuse and leadership failures.

1.6 Vatican Summit on Child Sexual Abuse

The recently concluded discussions at the Vatican's historic summit on child sexual abuse, shows modest immediate appetite for canonical, administrative and cultural change,^{xiiixiiiv} rendering the TJHC approach somewhat dated. The Pope's 21 'Reflection Points'^{xv} for delegates at the start of the conference, and his strong statement as the summit concluded of 'an all-out war against the abuse of minors' are positive starting points. However, the Church's response to date has left her with many sceptical followers, with her trust and integrity diminished. Only actions will suffice from here.

ACBC President, Abp Mark Coleridge delivered the homily at the concluding Mass on 24 February with a sense of urgency and need for concrete action noting, 'we do not have forever and we dare not fail'. He delivered a stark assessment of where the Church finds itself as well as indications of the pathway forward:

In its abuse and concealment, the powerful (of the Church) have shown themselves not men of heaven, but men of earth...^{xvi}

A mission stretches before us – a mission demanding not just words but real concrete action...We will do all we can to bring justice and healing to survivors of abuse; we will listen to them, believe them and walk with them; we will ensure that those who have abused are never again able to offend.

We will call to account those who have concealed abuse; we will strengthen the processes of recruitment and formation of Church leaders; we will educate all our people in what safeguarding requires; we will do all in our power to make sure that the horrors of the past are not repeated and that the Church is a safe place for all.^{xvii}

Unsurprisingly, many of the victims and survivors are unpersuaded, looking for more explicit contrition from the Pope^{xviii}, and more concrete proposals^{xix}. Their anger is deep and their

response visceral^{xxxxi}. The summit has been analysed forensically by victims, survivors and their advocates together with the media. For many it is seen as too little too late, and for some legislators it will take time to be persuaded that the Church can be trusted to manage this crisis, in particular, bring perpetrators to justice^{xxii}. Recent comments from the Pope such as attributing the actions of abusive priests to the devil^{xxiii}, and his response to female speakers that feminism is 'machismo in a skirt'^{xxiv} reduce optimism for real change as they indicate an ongoing failure to accept the temporal nature of these crimes, and the fundamental role of the Church's systemic culture in enabling the abuse crisis to occur in the first place, and then to be covered up. However, the Pope's comment to a Chilean abuse survivor that he, the Pontiff was originally part of the problem^{xxv}, equally shows the journey required for many Church leaders. Statements released since the closure of the Summit^{xxvi} show an appreciation of the need for speedy concrete action. However, it would be difficult to overestimate the task ahead of the global church and the job for each country.

1.7 Conviction of Cardinal George Pell

On 11 December 2018 Cardinal George Pell was convicted in Melbourne's County Court of child sexual offences committed in 1996 and 1997, but the verdict was subject to a suppression order as a further case was pending. On 26 February 2019, the further cases were dropped and the verdict published. This resulted in a storm of media locally and globally. There have been emotionally charged responses from both victims and survivors, and from supporters of Cardinal Pell.

Pell's selection by Pope Francis as Prefect of the Secretariat for the Economy placed him as one of the most senior figures in the Church globally, hence the level of interest. Cardinal Pell maintains his innocence and will appeal.

It is noteworthy that in his instructions to the jury, Justice Kidd (as well as Pell's barrister Robert Richter QC) cautioned them against scapegoating Cardinal Pell and punishing him for the failings of the Catholic Church in Australia. The Vatican's Congregation for the Doctrine of the Faith will now examine the case, but is unlikely to finalise its findings until after the Australian appeals process has run its course.

Despite the forthcoming appeals process, some have taken the conviction as a call to action. A parish priest here in Melbourne had a family phone his school principal the day after the verdict was announced and withdraw their child's application for enrolment on the basis of the Pell conviction. Undoubtedly the eyes of the local Catholic community and the broader global community will be watching the response of the Vatican, particularly if the guilty verdict is upheld, once the appeal has run its course. It will be a litmus test of the Church's commitment to eradicating child sexual abuse.

1.7 Outline of Paper

This paper will look at the practical challenges of Catholic agencies; what is best practice in the governance of Catholic agencies; and meeting government requirements in Church organisations. Its focus is broadly on good governance (including good administration), not

on child safe standards, and its interest is in Australia, despite the global nature of the issues the Church faces. At the request of the conference organisers it examines the civil governance requirements which can offer insights to those in administrative or governing roles in Church agencies, and is deliberately reflective and practical in tone addressing intertwining management and governance issues.

2.0 Practical challenges of Catholic Church agencies

2.1 Legal-Regulatory

We begin from the basis of the Church's explicit support for democratic institutions, the rule of law and the separation of church and state. Where there are gaps or tensions with canon law such as secrecy provisions, adequacy of checks and balances, and provisions for bringing all within the Church to justice, these can be considered by the Vatican. However, at the local level, we need to reflect on the legal, regulatory and administrative arrangements adopted in Church governance and whether there are areas for improvement.

2.1.1 Power relations

One of the practical challenges of church agencies is a legal-cultural one. Whether civil or canonical, laws are intended to shape behaviour. In his paper on Canon Law prepared for the TJHC, Dr Rodger Austin cites both Paul VI and John Paul II who emphasised that all members of the Church 'have a duty in conscience to obey the law' (p7). Citing Pope Pius X, Dr Austin observes that the constitutional structure of the Church is essentially an unequal society with two categories of persons – a pastor and a flock.

So distinct are these categories that with the pastor rests the necessary right and authority for promoting the end of the society and directing its members towards that end; the one duty of the multitude is to allow themselves to be led, and, like a docile flock, to follow the Pastors. (Pius X in Austin 2016, p2)

Until a later pope clarifies or modifies Pius X notion of a 'docile flock' those working in church agencies have an uneasy understanding of their relationship to their bishop or episcopal vicar. Particularly in education the local ordinary has the authority to direct and control their professional and religious activities. Canons 793 – 821 set out the requirements for all types of Catholic education institutions. In relation to schools:

Can. 806 § 1 The diocesan Bishop has the right to watch over and inspect the catholic schools situated in his territory, even those established or directed by members of religious institutes. He also has the right to issue directives concerning the general education of catholic schools. These directives apply also to schools conducted by members of a religious institute, although they retain their autonomy in the internal management of the school. (1983 Code of Canon Law)

An argument could be put that government schools operate according to state laws, and are also under the supervision of a person vested with significant power – a minister. This is correct. As someone who has been both a director of Catholic Education, and a senior public servant at both state and federal levels, I note some differences. Ministers are much more visibly accountable to their premier and cabinet colleagues than bishops to the Pope – and bishops have no equivalent to cabinet for peer critique. Ministers are ultimately accountable to the people they serve – citizens who vote at regular intervals, not a ‘docile flock’.

Further, bishops are appointed until the age of 75 with limited requirements to account for their performance, unlike ministers. Ad limina visits every five years do not equate to election cycles in relation to accountability. Also, ministers are likely to receive more media attention than bishops – another form of accountability. There are higher, more explicit requirements for transparency to government than church authorities, and the requirements are generally codified, including consequences for non-compliance.

There are unequal power relationships between directors of Catholic education and heads of Catholic welfare agencies and their bishops, as well as between department secretaries and their ministers, as both constitute an employment relationship. However, until the defrocking of Cardinal McCarrick on 16 February^{xxvii} there was no evidence of the Vatican holding its senior personnel accountable, nor are there any explicit canon laws to enable this. This exacerbates the inequalities in the relationship of senior lay people who report to bishops, as only one party is comprehensively accountable for their actions, and that is the party who is the employee, the party who can be sacked.

2.1.2 The Local Ordinary

Further into his analysis Dr Austin explains that the Pope as the successor of Peter and the Vicar of Christ is the Pastor of the universal Church. The Pope and the bishops constitute one college (p12). In the local church, the bishop exercises power.

A particular Church, in accord with the teaching of Vatican II, ‘is a portion of the people of god entrusted to a bishop to be shepherded by him with the cooperation of the priests’. The bishop is not the delegate of the Pope but governs the particular Church as the vicar and ambassador of Christ. (Austin 2016, p14)

There is some dissonance for the People of God, those baptised Catholics who understand the Second Vatican Council as ascribing them status as co-contributors to the universal mission of the Church. Quite properly the bishop acts as defender of the faith, and pastoral leader in his diocese. For lay people in senior roles in Catholic agencies, this is expected. Depending on the disposition of the bishop there can be a harmonious, professional, affirming relationship. There are many examples in Australia of such working relationships. However, there are also examples of interventionist, heavy-handed approaches which make it difficult for the lay person to undertake their role. Like their counterparts in senior government or commercial roles, lay people in Church agencies need to develop a

productive working relationship with their 'direct report' (their bishop). Formation in preparation for the role, or whilst in it, can be helpful.

In papers prepared for professional development sessions for members of the board of Mercy Health in 2017 canon lawyer and academic Fr Frank Morrissey O.M.I explained:-

Through their baptismal incorporation into the Church lay persons share gifts and graces to build up the Church from within. In cooperation with, and under the direction of the Church's hierarchy. Their roles often require additional formation which may include academic preparation, certification, credentialing, and a formation that integrates personal, spiritual, intellectual and pastoral dimensions.

What seems to be clear is that formation for ministry in Catholic apostolates goes beyond education in a particular professional discipline or support position. Of necessity, it includes engagement of each person's heart and soul, their personality, spirit, and intellect, and must be rooted in their concern and service for others. (Morrissey p20-21)

What is not discussed above is the corollary, the need for bishops to understand the civil dimensions to the roles of those who lead church education, health and welfare agencies.

2.1.3 Governance and management roles

Senior roles in church education, health and welfare agencies are now often held by lay people. Most of the church health agencies were established by congregations and are now governed by boards, often Public Juridic Persons (PJP).

A juridic person could generally be understood to be the church's canonical equivalent of a corporation set up for one or more specific purposes. Each juridic person functions through legitimately designated physical persons who function as its representative according to the approved statutes. It represents the church in the same way that religious institutes did so in previous times...This implies profound trust and confidence in the potential for the laity to assume direct responsibility for such undertakings. (Morrissey, p26)

We can consider the Catholic health sector separately from education and welfare due to its governance generally being through boards administratively separate from diocesan arrangements. The Catholic health sector in Australia has distinguished itself with the adoption of a two-tiered PJP governance model in many of the health enterprises similar to the German corporate model. Trustees have a particular oversight of the mission and stable patrimony of the enterprise, while the board's governance role is the oversight of the effective conduct of the operation. This is proving to be an effective governance model, although a causal link to improved performance is yet to be established.^{xxviii}

As the PJP is a relatively new model of governance, owners, trustees and boards have had to work through their charters, delegations, policies and governance matrices. This has sharpened their focus on right relationships and good governance. They are generally peopled with members from a diverse range of professional, religious and stakeholder backgrounds adding to the possibility of robust exchange. This governance model (whether two-tiered or unicameral) has great potential within the church.

There is generally a different arrangement in Catholic education and welfare agencies to health - they are more likely to be nested in diocesan structures with direct reporting to a bishop or episcopal vicar. Most positions are now led by lay people. There is a heavy reliance on government funding, particularly in education, and Catholic Education Commission directors are signing billiondollar agreements on behalf of the schools that bind them to certain government policies. The contractual obligations are not always well understood by the schools or some bishops.

I recall a period when I was Chief Executive of the Catholic Education Commission of Victoria, (CECV) that it was government policy that schools grade students on an A – E scale. Teachers and principals (and some diocesan directors) saw this as government overreach into the professional practice of schools and were refusing to implement the approach. The funding agreement put implementation of the A – E grading approach as a precondition to receipt of funding. The Government was aware that the policy was deeply unpopular with schools and left it to the signatories to the funding agreements to enforce their policy. It was an extremely difficult task, and in some places implemented in the most minimalist and perfunctory fashion!

It was not well understood in schools nor the episcopacy that the person who negotiated for the funding on their behalf, and undertook to ensure compliance with its associated contractual obligations, was in a quasi-regulatory role. This person is responsible for the receipt, distribution and accountability of significant funding^{xxix} for schools from the public purse, and is responsible and liable for serious breaches. This meant that the administrative and support role of Catholic Education Offices for schools went beyond professional support, religious education and canonical requirements to a de facto compliance enforcement role. It is not an option to take the funding and ignore the conditions, no matter how contentious or trivial. These significant contractual requirements need to be better understood.

2.2 Co-location

The co-location of many Catholic primary schools on parish lands, and the co-location of Catholic Education Offices in diocesan centres could sometimes be problematic. During my time as Director of Catholic Education a report was made to the education office that a priest convicted of offences related to child sexual abuse was living in the presbytery of a church co-located with a primary school. The parents had learnt of this and were volubly concerned for the safety of their children. When the issue was raised with diocesan authorities there was reluctance to take action on two grounds – one was that the priest had completed a course in the US for sexual offenders and was judged to no longer be a

threat, the other was that the principle of salvation should be applied. In other words, the priest was entitled to redemption in the circumstances.

There was no argument that the priest was entitled to redemption, however not in circumstances where his living arrangements created a potential risk (no matter how small) for those children in the care of the Diocese. This issue opened a divide between the diocesan authorities concerned for the welfare of the priest, and the director concerned for the safety of the children as well as the legitimate fears of parents. Inaction led to a major media focus on the school and parish, and the need to remove the priest whose confidentiality was now compromised. It was an example of a situation where we generally agreed on the principles – the rights of the children to safety and of the priest to redemption, but not to the priority of these competing rights, nor the means of achieving a resolution.

Another potential problem with co-location is having the Church as a landlord. Education and welfare agencies are often housed in church properties. This can be a positive arrangement and deliver efficiencies. However, those managing budgets delivered largely through the public purse need to ensure they are paying competitive market rates and that personnel employed in education or welfare positions are not drawn unreasonably into the work of the diocese. Those responsible should avoid engaging in a related party transaction and thereby breaching the ACNC Governance Standards, and those of the Australian Accounting Standards Board.^{xxx}

It is important to have clear delineations of structure, function and role and not to have boundaries that are too porous. This can be especially sensitive in areas such as the purchase of land for dual purposes of establishing both a school and new parish church on a greenfield site. Clear protocols are needed to ensure that proper boundaries are established between the legitimate interests and financial shares of both parties. Governments^{xxxi} and Auditors General^{xxxii} have shown an appetite in recent times to scrutinise the affairs of NFP agencies, including churches. Indeed, the Victorian Auditor-General was critical of Victorian Catholic schools in a recent report:

Schools examined in this audit were mostly unable to adequately demonstrate that grants had been used as allowed under the funding agreements. (VAGO, 2016)

Whilst the schools were defended by the CEO of the CECV at the time, it can be damaging to the reputation of the Catholic education sector and the broader church when these kinds of findings are made. Prudent management with strong protocols for meeting fiduciary and regulatory responsibilities are preferable to being nudged or shamed into good practice.

2.3 Co-mingling

There are some particular challenges for lay people (and religious or clergy) running church agencies. They are subject to the authority of the bishop on theological and ecclesial matters but responsible to governments on fiduciary and regulatory matters, especially for

the receipt and expenditure of public monies. There is some overlap with diocesan authorities rightly requiring financial and governance accountability. These dual sets of (sometimes overlapping) responsibilities can be managed as long as there are clear governance arrangements, including agreed delegations and measures to manage conflicts of interest. Reporting lines need to be clear, and relative to responsibilities and liabilities.

One of the challenges can be the relationship with the diocesan business manager, who operates within the aura of the bishop's authority, and whose word is often presumed to carry the weight of the bishop's. There need to be clear separations of finances, function and role, together with clear boundaries between the work of the diocese and that of the education or welfare agency. Under no circumstances should there be a co-mingling of funds, and caution should be exercised with the application of 'administration fees'. As well, care should be taken when there are projects of common interest (such as the purchase of land for a school and parish church) to clearly delineate the relative uses of the site and associated costs.

It is always helpful to bring in an independent probity expert in such cases to ensure due consideration has been taken of respective costs and liabilities. A note of caution relates to the use of legal firms for such advice. The RCIRCSA heard sufficient evidence of the weak appreciation of many of the Church's legal advisers as to the ethical and moral dimensions of their decisions. Similarly, the Financial Services Royal Commission heard evidence of mendacious lawyers advising banking clients of what they could get away with, not what was the right thing to do.

A related matter to co-mingling of funds and responsibilities, is the need to spend monies for the purposes for which they were given whether those monies came from the public purse, or from donors. There has been a recent example of pressure being put on a church agency to disperse monies into diocesan coffers, rather than on the activities of the agency. This is disturbing. There needs to be an unambiguous commitment to spend monies for the purposes for which they were given. If there is any doubt apply the *Herald Sun* test. If you'd be happy for the story to be written on page one of your local tabloid, then is it probably okay.

While this practical advice is aimed at supporting managers and governors in their administration and decision-making, it is the broader cultural context within which they operate which can have a profound influence over work behaviour and governance practice.

2.4 Culture

The December 2017 Final Report of the RCIRCSA, the May 2018 Report of the Australian Prudential Regulatory Authority (APRA) into the Commonwealth Bank, and the February 2019 Final Report of the Financial Services Royal Commission all highlight the importance of culture in influencing workplace behaviours. Another key document, *Managing Culture: A Good Practice Guide* was published in December 2017 by a group of professional member bodies following concerns aired by the Australian Securities and Investment Commission (ASIC) and APRA on evidence of poor corporate practice and the significant risks around

poor corporate culture in Australia. In addition, during the writing of this paper the ASX *Corporate Governance Principles* were released. The relevance for Church agencies is that these principles-based approaches show high levels of commonality, and public acceptance, and as such can collectively act as a guide to improved governance practice.

Managing Culture: A Good Practice Guide identifies four key components of good governance – transparency, accountability, stewardship and integrity. It notes that culture is inextricably linked to governance, and that strong governance underpins a healthy culture. It reminds the reader that organisational culture should be driven and modelled by leaders – as much in Church as in government or commercial enterprises.

The report of the *Prudential Inquiry into the Commonwealth Bank of Australia (CBA)* commissioned by APRA, not only examines the governance and fiduciary conduct of the CBA, but provides general advice in its commentary and findings. First, the authors note, ‘compliance obligations are broader than strict legal requirements and incorporate standards of integrity and ethical behaviour.’ (p7) Further, ‘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?’). (p35)

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...’, that ‘[a]ccountability can be delivered through formal frameworks and culture... However, 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.’ (p58) 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 Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry followed a year of public hearings in which damning evidence was adduced on the unconscionable and egregious behaviour by some in the sector that damaged the lives of the vulnerable customers. These behaviours were driven by greed, perverse remuneration incentives and weak governance. The report highlighted the failings of organisational culture, governance arrangements and remuneration systems. There were failings of both boards and management with too many instances of boards not challenging management, and operating with insufficient information to make an informed decision.

The findings have relevance for church bodies in terms of ensuring they adopt good governance practice and nurture a healthy culture. A healthy culture is founded on an ethical base, avoids complacency by undertaking regular reviews, is mission-focussed, listens to its stakeholders and those impacted by its works, and is transparent and accountable for its actions. Commissioner Hayne recommends that boards monitor, measure and assess corporate culture and governance and provide a rigorous oversight of

risk, including non-financial risks. These lessons are as helpful for Church as secular agencies.

The Final Report of Royal Commission into Institutional Responses to Child Sexual Abuse identified deficiencies in both Canon Law and Vatican procedures. As noted above, the governance problems besetting the local Church include the hierarchical nature of church governance; the independence, power and lack of accountability of bishops; the culture of clericalism; the deficiencies in relation to accountability, transparency and inclusion in decision-making; and the slow and inconsistent responses from the Vatican.

The ACBC and CRA are moving on the implementation of the recommendations. But as Abp Mark Coleridge noted prior to the historic Vatican summit, ‘*Words are no longer enough...For me over the years it's been a journey from seeing abuse as a sin, to seeing it as a crime and then finally seeing it as a culture*’. Understanding that those cultural elements extend beyond the introduction of child safe standards to good governance practice is critical. Ensuring precise roles and responsibilities, inclusion of lay women and men, enhanced transparency, and strong fiduciary oversight are all important steps.

It is important to note that the Catholic Church in Australia is a large, geographically dispersed, and diverse enterprise with a range of governance arrangements and practices – some of them exemplary. However, the global revelations of systemic child abuse and sexual misconduct indicate that this institution, temporal as well as divine, has some deep-rooted cultural practices that need to be rectified. What does good practice governance in a church agency look like?

3.0 Best Practice in the Governance of Church Agencies

3.1 Institutional Practice

In seeking to identify good practice for Church agencies it is useful to look both at the institutional level, and at what good practice looks like for the leaders themselves. Arguably the most helpful publication in recent times at the institutional level is the report of the February 2019 US Catholic Partnership Summit which moved from examining the root causes of the crises of abuse and leadership failure, to identifying the guiding principles and desired outcomes which would assist it move forward:

Guiding Principles

- *impact the Catholic Church based on five principles: transparency, accountability, competency, justice, and trust,*
- *impact the leadership and management culture of the Church, in line with Catholic beliefs, ecclesiology, and canon law,*
- *restore trust in the Church based on measurable, visible outcomes,*

- *engage both ordained and lay Catholics, working together for the mission,*
- *lean forward, not dwell in the past;*
- *be realistic and able to be translated into practical strategy, organization, and implementation.*

Desired Outcomes

- 1. Model the clergy-lay collaboration and co-responsibility that is the future of our Church*
- 2. Develop actionable recommendations for USCCB leadership*
- 3. Develop actionable recommendations for bishops and disseminate as best practices throughout the country*
- 4. Begin to focus on root causes of the crisis*

While the ACBC and CRA are using the recommendations of the RCIRCSA Report as their first steps toward improvement, there would be value in also considering the advice in this report.

3.2 Foundations of Good Catholic Leadership

It is a truism that none of us is ever fully formed. The most mature, scholarly, spiritual and compassionate of us can still have areas for development. Arguably those who entered clerical or religious life have an advantage over those lay leaders in the Church as they have had years of initial formation, and regular time set aside for reflection – time that is generally more difficult for those juggling family and other worldly commitments. The counterpoint to this is that many lay leaders have a depth of training, knowledge and skill in their professional field and bring this to their leadership role. Whether it be an understanding of administration, governance, finance or legal systems, these knowledge sets are critical to the effective management and governance of church agencies.

However, more is expected of a leader, trustee or director in a Catholic agency. They are expected to have a mature faith, and a depth of commitment to Catholic teaching, including Catholic social teaching.

3.2.1 Catholic Social Teaching

The United States Catholic Bishops Conference (USCBC) has issued advice on the key tenets of Catholic social teaching.^{xxxiii} The seven tenets are important guidance for those working in Catholic health, education or welfare agencies. They are:

- Life and dignity of the human person

- Call to family, community and participation
- Recognition of rights and responsibilities
- A preferential option for the poor and vulnerable
- The dignity and rights of workers
- Solidarity as one human family and
- Care of creation

Those in governance roles know the importance of discernment to their decision-making, and those in management understand the principle of subsidiarity. For those in the Catholic health sector, hospitality is an important dimension of their approach, along with compassion and person-centred approaches. Similarly, those in the education and welfare sectors adopt person-centred approaches with a particular focus on the vulnerable and marginalised. These are some of the elements that make an agency Catholic. And there are other features that distinguish Catholic agencies from their secular counterparts.

3.2.3 Catholic works

Fr Frank Morrissey makes the distinction between ‘Catholic works’ and ‘works of Catholics’ (e.g. St Vincent de Paul). He argues that for works to be undertaken in the name of the Church the following conditions must be met:

1. They must have a spiritual purpose (canon 114)
2. A work carried out in the name of the Church must answer a need (canon 114)
3. The undertaking must have sufficient means to achieve its purpose (canons 114 -3 and 610)
4. Works carried out in the name of the Church are expected to have a certain perpetuity or stability
5. Those who have been entrusted are to carry out their works as good stewards caring for the work and its assets (canon 124 – 1)
6. Those in charge of a Catholic work are to ensure, under the supervision of the local ordinary that the care given in it, or the works carried out, are in their standards, at least as outstanding as those in similar institutions in the region (canon 806) and

7. Providing a work of quality care requires special preparation. (Morrissey 2017 pp39-40)

These seven tenets, along with the core elements of Catholic social teaching, are important signposts for those in governance or managerial roles in Catholic agencies. If your mission is clear, and you consciously align your strategic and operational plans with these fundamentals you should be on the right track. If you model dispositions of compassion and care; if you prioritise the poor, vulnerable and marginalised; if you operate on the principles of subsidiarity, discernment and good judgement in your decision-making; and if you strive for integrity in your dealings and excellent service delivery - then you should be operating a Catholic work. It is important to remember that Catholic agencies do not have a monopoly on care, compassion and a disposition for the poor - eg the Victorian Government's Breakfast Clubs feeds breakfast to needy children in 500 schools from food sourced from food banks.

Leaders of Catholic agencies will also be expected to operate according to best practice civil governance as well as canonical and ecclesial standards.

3.3 Civil governance standards

There is a wealth of advice for charities and other not-for-profit entities on operating with good governance practice in terms of civil standards and expectations. Churches whether incorporated or not, share the fundamental corporate features of other NFP entities – they operate on a not-for-profit basis, they are mission-driven and they operate for the public benefit. I have argued elsewhere (Pascoe 2018b) that it is reasonable to expect churches to operate according to the same standards of governance as other NFP organisations. The most compelling argument for me is that as a moral guardian the Church would want to model exemplary ethical practice. As noted above we have seen instances where legal advice which has been sought and followed has been short-sighted, litigious and defensive with a resulting erosion of the Church's ethical standing. In light of the RCIRCSA findings regarding the tendency to protect assets and reputation above the moral obligation to protect children and vulnerable adults and ensure just redress to victims of clerical abuse, together with the abhorrence of this practice voiced at the recent Vatican summit, there is an opportunity for the Church to strengthen its governance practice and regain this ethical lead.

3.3.1 ACNC Governance Standards

There are mandatory minimum standards required by the ACNC of all charities to retain their registration and the gateway to tax concessions. These are:

- 1 – **Purposes and not-for-profit nature** Charities must be not-for-profit and work towards their charitable purpose.

2 – Accountability to members Charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed.

3 – Compliance with Australian law Charities must not commit a serious offence (such as fraud) under any Australian law.

4 – Suitability of responsible persons Charities must take reasonable steps to be satisfied that its directors are not disqualified from managing a corporation, and remove any responsible person who does not meet these requirements.

5 – Duties of responsible persons Charities must take reasonable steps to make sure that responsible persons are subject to, understand and carry out the duties set out in this standard.

Although Basic Religious Charities gained an exemption from financial reporting to the national regulator, the ACNC, this now looks erroneous with the RCIRCSA findings on systemic governance weaknesses in the Church including inadequate accountability and transparency. Individual parishes and other Church agencies not required to report might wish to do so voluntarily to model good practice.

It is worth noting that in my time as inaugural ACNC Commissioner, there was only one substantial complaint about a Catholic agency.^{xxxiv} And despite initial vigorous lobbying^{xxxv} against the establishment of a national regulator for charities, and the arguments against the inclusion of churches within its remit, that diocesan and congregational bodies worked constructively with the regulator once the legislation was passed and was a fact of life. However, the image of the Church being dragged into comparable levels of governance and compliance as other NFP organisations was not helpful to its reputation, particularly in light of the secrecy provisions in canon law that shield alleged perpetrators, and the Church's poor record of holding to account wrongdoers within its ranks.

3.3.2 AICD NFP Governance Principles

Apart from the ACNC there are professional and member bodies with helpful advice on good governance for all NFPs, including Churches. Organisations such as JusticeConnect, Our Community, and the Governance Institute of Australia have excellent materials, often free of charge. The Australian Institute of Company Directors (AICD), formed some 50 years ago to support good governance in the business sector has diversified and now provides education and materials for the NFP sector. The RCIRCSA final report referred to the AICD NFP principles as a good starting point for Churches wanting to improve their governance. The revised principles^{xxxvi} provide more of a stretch for NFPs than the ACNC standards, are designed to guide good practice and were revised recently following extensive consultation. The ten principles are:

- 1. The organisation has a clear purpose and a strategy which aligns its activities to its purpose*
- 2. There is clarity about the roles, responsibilities and relationships of the board*

3. *The board's structure and composition enable it to fulfil its role effectively*
4. *The board is run effectively and its performance is periodically evaluated*
5. *Board decision making is informed by an understanding of risk and how it is managed*
6. *The organisation uses its resources appropriately and evaluates its performance*
7. *The board demonstrates accountability by providing information to stakeholders about the organisation and its performance*
8. *There is meaningful engagement of stakeholders and their interests are understood and considered by the board*
9. *The expectations of behaviour for the people involved in the organisation are clear and understood*
10. *The board models and works to instil a culture that supports the organisation's purpose and strategy (AICD, 2019)*

The governing board of a Church agency which adopts these principles, and is mindful of complying with the ACNC's Governance Standards, should be on solid ground to meet its civil governance requirements. As well as seeking to adopt good governance practice, it is helpful for boards to learn from the good practice and misdeeds of others.

The ASX's eight voluntary corporate governance principles were subject to controversial consultation during 2018 with allegations of attempted 'social engineering' of Australian businesses. The version released on 27 February has much good governance practice of benefit to Church agencies laying a solid foundation for management and oversight, instilling the right culture, and recognising and managing risk. It is advocated that the principles be adopted on an 'if not, why not' basis – in other words, if you chose not to adopt a particular principle, you should be able to give a plausible rationale for doing so. Principle 3 is of most relevance:-

A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and in a socially responsible manner (ASX, 2019)

Although intended for the Australian business sector, there is advice within this set of principles which could assist Church agencies wanting to improve governance practice.

3.3.3 Effective Board Practice

There is a large accessible corpus of literature on effective board practice. I have written elsewhere on this topic (Pascoe 2018a) noting that a good board is one that can articulate the purpose, mission, values and principles of the organisation and that adopts a disposition of stewardship, integrity, accountability and transparency. Like any other board, it will have a chair with the expertise, time, reputation and commitment to lead from the top. It will have a mix of members with a matrix of identified skills and a diversity of talent and background. It will have a constitution or governing rules, abide by fixed terms, provide adequate induction and ongoing training, set aside sufficient time for meetings, adopt good governance practice in the conduct of meetings, communicate with its constituency, and

assess its effectiveness at regular intervals. The board will understand the legislative and regulatory environment in which it operates and its compliance obligations.

Boards governing Catholic enterprises will consciously aim to marry the theological elements underpinning good governance practice. At the February 2019 workshop on *Best Practice in the Governance of Catholic Agencies*, Mgr David Ranson presented on the theology of Church governance arguing that we need to be faithful to the sources of our Christian imagination. He called for governance practice which is invitational, dialogical, reconciling, healing, open, transparent and accountable - practice that engages all the people of God in a synodal approach. By demonstrating the congruence of ecclesial and theological traditions with civil governance practice, Mgr Ranson has illustrated the pathway for those in Church governance to approach their roles.

4.0 Concluding Comment

We are living in tumultuous times. The global Church is now subject to intense scrutiny, especially with the conviction of Cardinal Pell. For those in the Australian Catholic Church, we are ahead of many of other countries due to the comprehensive five year inquiry of the Royal Commission into Institutional Responses to Child Sexual Abuse. This lead time can be an opportunity for the Australian Church to exercise leadership. It is significant that ACBC President, Abp Mark Coleridge was asked to deliver the homily at the concluding mass of the Vatican summit on child sexual abuse.

We can lead both on improving child safety, and on improving governance. The ACBC-CRA Implementation Advisory Group is a good mechanism to move expeditiously on implementing the Royal Commission's recommendations. And the forthcoming Plenary Council 2020 is a positive focal point. Already there are high levels of engagement with thousands of submissions representing tens of thousands of individuals who have provided a submission either individually or collectively, as part of an organisation.

Now is the time for action in Australia. We have sufficient analysis of the problems. And while it is a 'big ship to turn around' as Fr Hans Zollner has reminded us, we can all begin in our local context. For those engaged in the leadership of Church agencies, this requires ensuring good governance within your enterprise, and right relations with diocesan agencies. We, the People of God, have been called by Francis^{xxxvii} to help in the revitalisation of our Church. It is time to answer the call.

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