Speaking the truth in love (Eph. 4:15): an analysis of the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse

Virginia Miller

This edition of St Mark’s Review offers constructive proposals for how Australian churches might respond to the Royal Commission and its findings.¹ This article offers an analysis of the findings of the Royal Commission, as far as they relate to the Catholic Church in Australia, as a starting point for the discussion. After all, an authentic response to the Royal Commission—let alone genuinely constructive proposals as opposed to knee jerk reactions—presupposes an objective analysis of its findings. In the course of providing this analysis, I discuss the limitations of the investigative processes of the Royal Commission. I also offer a corrective to the inaccurate media accounts of the findings of the Royal Commission.²

There are two striking conclusions from my analysis. First, the figures of child sexual abuse reported in the media are likely to be inflated and, as presented, misleading. Second, notwithstanding the very real trauma that

Virginia Miller is a research fellow at Charles Sturt University (PaCT). This article has been peer reviewed.
many victims of past acts of child sexual abuse continue to experience, the “crisis” of child sexual abuse in the Catholic Church in Australia is essentially a historical problem.

In keeping with these conclusions, my first recommendation to the church in Australia is to make these conclusions known to the Royal Commission and to the general public. My second recommendation is that constructive proposals—for example, in terms of redress to victims of child sexual abuse perpetrated by priests and church workers—be seen in light of these conclusions and framed accordingly. To be clear: my conclusions should not be regarded as an attempt to deny or downplay the horrific or otherwise morally unacceptable abuses that have taken place or to exonerate the church in relation to these abuses. However, in the prevailing climate of media hype and moral hysteria, it is important to restore some balance to the debate.

Section 1 of this article begins with a comment on the Royal Commission’s use of the term “survivor” to describe all the people who made claims to the Royal Commission in the private sessions. This comment leads into a discussion of the Royal Commission’s meetings with alleged victims of child sexual abuse. These meetings are called the “private sessions”. While these sessions provided a forum for many of those who had suffered horrific sexual abuse as children and hitherto been denied justice, the allegations made in these private sessions were untested and therefore, in legal terms, unsubstantiated; as such, they cannot simply be accepted as true. Yet the Royal Commission published the findings of the private sessions and created media releases which did not have a clear warning that these claims were unsubstantiated. This is deeply problematic; obviously, unsubstantiated claims are not necessarily true. More specifically, the claimants in the private sessions were not cross-examined or otherwise tested but simply taken at face value. This is not to say that all or some of these claims are in fact false. Indeed, given that many allegations of serious child sexual abuse on the part of priests and of cover-ups by church authorities have been substantiated elsewhere, it is likely that many of the allegations made in these private sessions are in fact true. However, to reiterate, the status of these claims is that of unsubstantiated allegations.

Unsubstantiated claims are further discussed at length in section 2, which begins with a discussion of the Royal Commission’s processes and then considers the risks attached to these processes. These risks arise from a
reliance on unsubstantiated and, therefore, potentially false claims. Indeed, not only are some of these claims unsubstantiated and, therefore, potentially false but others are in fact false or, at least, highly likely to be false. The types of claims that are false or highly likely to be false include vexatious claims and claims made in order to fraudulently obtain money through redress processes. Claims that are potentially false—or, indeed, unreliable—include recovered repressed memories. Recovered repressed memory claims are discussed at length given the Royal Commission’s reliance on these types of claims and the extensive legal literature that warns about the need for caution when dealing with these claims. Finally, the extent of unsubstantiated and potentially false claims of child sexual abuse is discussed.

Section 3 of this article focuses on the Royal Commission’s methodology and, in particular, the application of that methodology to the data that was collected from the Catholic Church concerning allegations of child sexual abuse. It is pointed out that some of these allegations were not substantiated or only based on weak evidence. Furthermore, it is argued that the weighted methodology used by the Royal Commission produced an inflated figure of priests who have had allegations of child sexual abuse levelled against them. A related difficulty concerns the survey instrument that the Royal Commission gave to the Catholic Church authorities to collect data about alleged acts of child sexual abuse. In particular, the survey instrument did not inquire as to the nature of the act of child sexual abuse. Consequently, it was not possible for the Royal Commission to categorise the allegations according to the seriousness of the claims; less serious allegations were included with more serious ones. A further complication concerns the Royal Commission’s decision to define a child as anybody who is 18 years of age or under. This is problematic because the age of consent in Australia varies and in some states is 16 years of age.

In section 4 it is argued that the evidence provided to the Royal Commission shows that the problem of child sexual abuse in the Catholic Church is in large part a historical problem. This is not to deny that the Catholic Church was the site of many horrific instances of child sexual abuse and that it failed the victims of this abuse on multiple occasions. However, it is to reject the currently dominant media perspective on the issue—for example, that large numbers of currently serving priests are paedophiles.

My conclusion of the historical nature of the problem is drawn on the basis that most of the claims of child sexual abuse referred to acts that
allegedly occurred in the seventies or earlier and that claims of more recent acts of child sexual abuse in the Catholic Church are very low. Moreover, it can be plausibly argued that the decrease in allegations of child sexual abuse in the Catholic Church should be attributed to a growing awareness of how to protect against sexual abuse by priests and church workers, changes in the broader society (including a growing awareness of the impact of child sexual abuse), and the implementation of preventative strategies to protect children in the church. This section also discusses the extent of delayed reports of child sexual abuse and the associated problems with delayed reports.

Section 5 concerns alleged offences by lay people and peers in the Church. This section includes a discussion of the now prevalent view that priests are more likely to commit acts of child sexual abuse than other members of the community. It is argued that this view is not correct and is based on a misunderstanding of the data.

1. **Private sessions**

The Royal Commission first heard stories of child sexual abuse in what it called “private sessions”. In these sessions, a person making a claim of child sexual abuse met with a commissioner and told the commissioner his or her story. Importantly, as noted above, these claims were not substantiated. A decision was made by then Attorney-General, Mark Dreyfus, that the Royal Commissions Act 1902 (Cth) would be amended so that large numbers of people could tell their stories to the Royal Commission without cross-examination. This amendment to the Royal Commissions Act 1902 (Cth) freed the Royal Commission from the laborious task of investigating claims of child sexual abuse or cross-examining people who made such claims. The following quote from the Royal Commission's final report outlines the exact nature of the amendment that was made to the Royal Commissions Act 1902 (Cth).

The Royal Commissions Act 1902 (Cth) was amended specifically to allow the Royal Commission to hear from survivors in private sessions. The Act now provides that a private session is not a hearing of the Royal Commission, and that a person who appears at a private session is not a witness before the Royal Commission or considered to be giving evidence. Consequently, those participating
in private sessions were not required to take an oath or affirmation and were not subject to cross examination but were expected to tell the truth.\textsuperscript{5}

The Royal Commission created quantitative data from the private sessions and reported the data without stressing that the data consisted of unsubstantiated claims. Accordingly, the impression created was that these unsubstantiated claims were necessarily true claims, despite the risk of false allegations existing in the data.\textsuperscript{6} Furthermore, the Royal Commission published many unsubstantiated stories that read as though the stories had been substantiated because of the terminology used—that is, “survivor”. These stories were de-identified as far as the claimants were concerned, but they identified the institution where the alleged abuse occurred and have clearly damaged the reputations of these institutions.\textsuperscript{7}

Note that the Royal Commission decided to call claimants of unsubstantiated child sexual abuse “survivors” as a sign of respect for victims of child sexual abuse. Some of the victims had otherwise not had their claims believed, had been punished for making such claims, or had been treated with derision when making such claims. The Royal Commission did not want to re-traumatise these people by doubting the veracity of their claims.\textsuperscript{8} However, to iterate, the implication of this use of the term “survivor” is that all of the claims are true claims.

That some of these stories were highly likely to be false irrespective of the denotation “survivor” is illustrated by claims to the Royal Commission by Fiona Barnett, who claimed that she was sexually abused as a child by three former prime ministers and that she witnessed hundreds of crimes, including abductions, rape, torture, and murder.\textsuperscript{9}

The problems with unsubstantiated claims will now be discussed.

\section{Unsubstantiated claims}

The Royal Commission’s decision not to substantiate the claims of the claimants is a cause of concern to many legal professionals—in particular, former Attorney-General and barrister-at-law Greg Smith, who also served as prosecutor and counsel assisting the NSW Independent Commission Against Corruption. He remarks:

I have been very concerned about the lack of cross-examination by the royal commission. It’s all very well to
say you are being compassionate and witnesses have been through enough, but where there is a so-called “target” who is challenging the truth of the allegations there should be cross-examination, particularly with historical cases, whether it’s recovered memories or whatever. In cases like this there could be fabrications, there could be the promise or wish of future compensation . . . I very much feel sympathy for people who have been molested, but I’m concerned about the sorts of statements that are being made about people who have had no opportunity to cross-examine.10

Evidently, the Royal Commission failed to provide adequate safeguards against the possibility of false claims. This failure is especially problematic when one considers the serious consequences emanating from false claims. Some recent examples of false claims of child sexual abuse against priests include the following from Ireland and Spain. In 2007, Paul Anderson was imprisoned for three years for falsely claiming that he was raped by a priest in 1981. Mr Anderson admitted in the High Court of Ireland, in 2016, that his claims of child sexual abuse by Fr Tim Hazelwood were false.11 A Spanish court recently declared that David Ramirez Castillo’s accusations of child sexual abuse levelled at Fr Roman Martinez were false and implausible.12 There are many more examples.

(a) Vexatious and fraudulent claims
In general, false claims are characterised into two different categories: claims that are known to be false and intended to deceive, and claims that are false but believed to be true by the person making the claim. Vexatious claims are typically false. They are intended to deceive and are made with the intention of damaging the person or institution that is the target of the allegation. Vexatious claims are sufficiently common in Australia to have led the government to enact legislation to enable courts to proceed against vexatious claimants.13

Also in the category of claims that are intended to deceive are fraudulent claims made in order to gain monetary compensation. These types of claims are also common. It is not unreasonable to expect that some of the claims made to the Royal Commission about the Catholic Church are of this type. Moreover, according to the data provided by the Catholic Church and relied on by the Royal Commission, 77 per cent of the claims of child
sexual abuse in the Catholic Church were made after the creation of redress schemes (in the late nineties). This is despite the fact that the numbers of alleged acts of child sexual abuse in the Catholic Church that are claimed to have taken place since the late nineties have been very low and that those claimed to have taken place since the mid-eighties are on a sharp downward trajectory. This very high figure of 77 per cent of child sexual abuse claims made post the introduction of the redress schemes, and made in the context of evidently low and declining actual incidents of child sexual abuse, has led scholars to conclude that some of the claims of child sexual abuse in the Catholic Church were fraudulently made for the purpose of monetary gain. However, it is also possible that many people who had not previously reported acts of child sexual abuse reported the incidents when the redress scheme became available.

(b) Recovered repressed memories

The second category of claims are those that are false but believed to be true by the person making the claims. Two such examples in this category are claims that are the result of misunderstandings of events and and/or false recovered repressed memories. The Royal Commission noted the risk of misunderstandings, particularly concerning grooming acts, which are considered acts of child sexual abuse.

Grooming can take place in person and online, and is often difficult to identify and define. This is because the behaviours involved are not necessarily explicitly sexual, directly abusive or criminal in themselves, and may only be recognised in hindsight. Indeed, some grooming behaviours are consistent with behaviours or activities in non-abusive relationships, and can even include overtly desirable social behaviours, distinguished only by the motivation of the perpetrator.

False recovered repressed memories are of particular importance to this research given the controversy surrounding these types of claims and the Royal Commission’s reliance on recovered repressed memories. Recovered repressed memories concern presumed memories that were recollected at a later date, usually through the prompting of family or through leading techniques in therapy, including altered states of consciousness. These recollections are often generated through exposure to books, movies, or the
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Indeed, claims of so-called recovered repressed memories have been treated with caution in Australia and abroad for over 20 years. Authorities have warned that memories obtained through counselling can be unreliable or false, including the Wood Royal Commission into the NSW Police Service, the American Psychiatric Association and the Royal Australian and New Zealand College of Psychiatrists, among others.

Legally in NSW it is incumbent upon the complainant whose evidence relies on recovered repressed memories induced in hypnosis to establish that the evidence is reliable and to prove a prima facie reason for its admission as evidence. Despite these legal guidelines, the Royal Commission decided not to investigate claims of recovered repressed memories. This uncritical acceptance of the veracity of recovered repressed memories has opened the Royal Commission to much criticism, as has the Royal Commission’s involvement with Cathy Kezelman, the president of the Blue Knot Foundation.

Kezelman wrote a book detailing her personal experience of recovered memories of child sexual abuse, in which she claims that she began recalling childhood abuse in her 40s. The nature of this alleged abuse was extreme. One of Kezelman’s more disturbing claims is that she was ritualistically abused by men in hoods and that on one occasion the men in hoods took her to a cave where she witnessed a girl being dismembered on a stone altar. There is no evidence to support this claim. Indeed, Kezelman’s brother Claude Imhoff refutes these claims and says, “It’s not that I don’t remember those things, I can categorically state that those events never happened.” Imhoff goes on to say that he is concerned that Kezelman had not mentioned anything about the dangers of false memories being created in counselling sessions. His motive for speaking out is to prevent a wave of false accusations and false persecutions arising from false recovered repressed memories.

The Blue Knot Foundation, with Kezelman as the president, is one of the organisations that received funding to counsel claimants who gave evidence at the Royal Commission. Kezelman also helped to write the national guidelines for counselling victims of sexual abuse and was appointed to a panel that advised the Turnbull government on the introduction of the redress scheme for victims of child sexual abuse in institutions. Ian Coyle, a forensic

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psychologist who assesses abuse claims for the courts, has criticised the Royal Commission for endorsing the Blue Knot Foundation. Coyle notes that the Blue Knot Foundation is, in large part, staffed by people with little experience in psychology or psychiatry. Indeed, several leading figures in psychology, including Richard Bryant, who is the director of Traumatic Stress Clinic in Sydney, have argued that the Royal Commission endorsed dubious counselling practices that could potentially harm the very people it was intended to help.²⁴

It is well-known in the criminal justice area that large numbers of unsubstantiated complaints typically include false claims.²⁵ Studies into childhood claims of child sexual abuse have suggested that between two and 35 per cent of claims of child sexual abuse are false.²⁶ Note that the difference in the percentage numbers can be attributed to the criteria for false claims used by the different researchers. The studies with the lower claims relied solely on false claims that arose from intentional lying, whereas the studies with higher figures included false claims that arose from intentional lying and as the product of suggestive questioning.

In concluding this section, it is important to note that at one time there was a prevailing attitude that children lie about being victims of child sexual abuse. There are numerous accounts of this in the Royal Commission’s evidence. This prevailing attitude was also evident in the church in the past. This general assumption of children being deceptive is not correct and must be guarded against. However, it has recently been argued that the pendulum has swung too far in the opposite direction; the contemporary prevailing thought is that children (and adults) rarely lie about acts of child sexual abuse. There is currently a trend in scholarship to develop a more sophisticated approach.

In this section, I have argued that the methods used by the Royal Commission in the private sessions were flawed. However, just to be clear, in doing so I am not denying the veracity of many claims of child sexual abuse or that such claims have evidential value (whether made by children or adults). However, I do deny that an allegation of child sexual abuse is in and of itself necessarily true. In the following section, I argue that the methods used to interrogate and draw inferences from the Catholic Church’s own records of child sexual abuse were also flawed.
3. Child sexual abuse complaints data: the Catholic Church

After the Royal Commission heard from claimants in the private sessions, it narrowed its focus to particular institutions. The Catholic Church was one such institution. In order to discover the extent of child sexual abuse in the Catholic Church, the Royal Commission commissioned data analysts Sphere Company to create a data survey that was given to Catholic Church authorities to complete. When this information was completed by church authorities and returned to the Royal Commission, it was given to Sphere Company, who cleaned and analysed the data.27

It is from this data analysis that the statistics that were published widely in the media arose. One such statistical claim is that seven per cent of all Catholic priests have been the subject of an allegation of child sexual abuse. This figure has been widely reported in Australia and abroad. The Daily Mail in Australia ran the headline “Shocking church data finds SEVEN per cent of all Catholic priests are accused paedophiles—and in some orders that number jumps to more than one in five.”28 La Repubblica, the popular Italian media outlet, ran the headline “Australia, paradiso degli orchi. Dal 1950 il 7% dei preti accusati di pedofilia”29 This translates to read, “Australia, a paradise of orcs. Since 1950 7% of priests have been accused of paedophilia.” Orcs are characters in JRR Tolkien’s works; they are brutish, aggressive, malevolent, and repulsive.

Evidently, the reporting of this figure has damaged the reputation of the Catholic Church in Australia nationally and internationally. We might also conclude, from the headline in La Repubblica, that the reputation of Australians in general has been tarnished. Yet this figure warrants scrutiny. It is the highest figure among those generated by international inquiries that posed the same question. For instance, the figure in the John Jay report of the total number of priests with allegations of child sexual abuse between 1950 and 2002 in the USA was four per cent.30 The Netherlands report puts the number at 1.7 per cent31 and Silvano Tomasi, the Holy See’s representative to the United Nations, claims the worldwide figure is between 1.5 and five per cent.32

(a) The weighted methodology

First, it is important to reiterate that an allegation is not necessarily a true allegation and that the figure of seven per cent includes priests over a 50-year
But now let us turn to the Royal Commission’s claim that seven per cent of priests in the Catholic Church have had allegations of child sexual abuse levelled against them.33 As stated, this is not correct—which is not to say that the actual number of allegations is not alarming. To begin with, the seven per cent figure is not an actual numerical fact but is instead the product of a weighted methodology that has included most Catholic priests over a 60-year period.34 Furthermore, the seven per cent figure is not an actual numerical fact, because it does not include priests who were in ministry for less than two years, it duplicates some priests, and it attributes weighted values to priests (i.e., a priest who has been in ministry for many years may be weighted as two priests).35 The figure is likely inflated, as evidence suggests that many offenders in the church do not offend in the early years of their ministry.36 Note that priests who ministered for less than two years have been removed from the analysis. Moreover, as mentioned above, the figure of seven per cent is likely to be inflated as a consequence of instances in which one and the same perpetrator was counted more than once. This likely duplication of alleged offenders arises because of the Royal Commission’s practice in cases in which the identity of the alleged offender is unclear; if the identity was unclear, it was assumed the person was not one of the already identified offenders.37 When the weighted methodology was not used, the figure was 5.6 per cent.38 However, this number still does not include priests who were in ministry for less than two years and involves some double-counting of priests.

Furthermore, the seven per cent figure or the 5.6 per cent figure includes all claims of child sexual abuse against Catholic priests, including claims that have not been investigated. This decision is outlined in the following quote from the Royal Commission.

The survey requested information about claims, irrespective of the outcome of the claim. It gathered information about all claims for redress, including those that were ongoing, settled or concluded without redress. The survey sought information on all claims: accepted by a Catholic Church authority; discontinued before the Catholic Church authority
could investigate the allegations; and, where the alleged abuse was investigated and was not accepted.39

There are additional problems in using the data provided by the Catholic Church to determine the number of true claims of child sexual abuse. Notably, the Catholic Church has a low standard of proof for making compensation payments.40 Thereby, it is likely that a number of claims for redress were paid to people making false claims. For instance, the Melbourne Response, a redress scheme established in Melbourne in 1996 by George Pell, did provide redress to 84% of claims, which is a strikingly high number.41 It is also worth noting that the Melbourne Response’s decision to make payment or offer compensation was not an admission of legal liability.42

Further, there are other difficulties with the data survey used by the Royal Commission (and created by Sphere Company). Notably, the data survey did not differentiate between serious and less serious forms of child sexual abuse. Moreover, the Royal Commission defines a child as 18 years of age or younger. This is problematic in Australia given that the age of consent is 16 or 17 depending on the particular state law. Both of these points are discussed in further detail below.

(b) Seriousness of offences
As mentioned above, there is no way to differentiate the claims of child sexual abuse that were provided to the Royal Commission with respect to their degree of seriousness—for example, between child sexual abuse involving penile penetration and touching a child over their clothing. The Royal Commission used a very broad definition of child sexual abuse, yet the survey instrument used by the Royal Commission did not ask about the nature of the alleged acts of child sexual abuse that were the subject of a claim.43 Therefore, there is no differentiation in the statistics generated in the report with respect to the seriousness of the claims. Claims of serious child sexual abuse are lumped together with claims of child sexual abuse that are less serious. In short, the Royal Commission’s statistical findings with respect to the extent of child sexual abuse in the Catholic Church is a finding with respect to child sexual abuse very broadly defined and, in particular, a finding that includes allegations of less serious forms of child sexual abuse. Accordingly, it is possible that a minority of the claims made were of forms of child sexual abuse at the serious end of the scale.
In one of the research projects funded by the Royal Commission, it was claimed that the most common forms of child sexual abuse for Catholic priests was touching a child under the victim’s clothing and over the clothing. There were fewer incidents of oral sex or penile penetration. This is not to say that less serious forms of child sex abuse are acceptable; however, here as elsewhere in law and morality, it is important to distinguish very serious from less serious offences. Further, we do not have a breakdown of low-risk offenders who may have offended once and high-risk offenders who have habitually offended.

(c) Age of consent
The age of consent is critical in terms of inquiries regarding child sexual abuse. Notably, by definition a child cannot consent to sexual acts; so, if an adult engages in a sexual act with a child, the act is an act of child sexual abuse. The Royal Commission defines a child as someone who is less than 18 years old. Accordingly, if a person who is 18 or older engages in a sexual act with someone who is under 18 years of age then, according to the Royal Commission, the former has perpetrated an act of child sexual abuse. In effect, the Royal Commission has decided to deem 18 to be the age of consent, at least for its purposes.

The age of consent is the age at which a person is regarded as legally competent to engage in sexual intercourse. If an adult engages in sexual intercourse with a person whose age is below the age of consent then the adult may be liable for criminal conviction for rape. So the age of consent is important legally. But it is also morally important. Indeed, its status in the criminal law reflects its moral importance. By virtue of their vulnerability, including their inability to make decisions in their own best interests, children need to be afforded the protection of the criminal law. However, the age of consent varies greatly across jurisdictions worldwide (e.g., 14 years old in Germany). Moreover, the age of consent in Australia has varied over time and across jurisdictions. Currently, it is 16 or 17 years of age depending on the state—and notwithstanding the Royal Commission’s decision to define a child as someone under 18 years of age. These variations indicate the existence of a grey area: an area in which it is not clear-cut whether or not a physically mature adolescent is in fact (as opposed to in law) competent to make a decision to engage in sexual intercourse. Of course, it is agreed on all hands that, for instance, a 21-year-old can be expected to make such
decisions whereas, for instance, a 10-year-old cannot be expected to make such decisions and, therefore, needs to be afforded the protection of criminal law. However, what of a 17-year-old? Here there is uncertainty and, therefore, uncertainty as to what the law ought to be.

At any rate, here I simply note that the Royal Commission’s definition of the age of consent conflicts with that adhered to by Australian legislators and presumably, therefore, with the general view of the Australian citizenry who elected those legislators. Evidently, unlike the Royal Commission, the Australian citizenry does not by and large believe that a 17-year-old who has had intercourse with an older person has necessarily been the victim of child sexual abuse; indeed, in some states many citizens presumably hold that even a 16-year-old who has had sexual intercourse with an older person has not necessarily been the victim of child sexual abuse.

Notwithstanding the above, Australian legislators and citizens do believe that children in special care need to be afforded special protections, including in pastoral care provided by priests. Therefore, it is currently an offence in some states to engage sexually with 16- or 17-year-olds in special care, including in pastoral care provided by priests. (This law is not in force in Queensland, Tasmania and the Commonwealth.) However, this law only came into force in NSW in a nascent form (Carnal knowledge by teacher) in 2002.\textsuperscript{49} Of course, it is not morally acceptable for a priest who has taken a vow of celibacy to engage sexually with a 16- or 17-year-old, even if the youth can consent to the activity—but is this an act of child sexual abuse?

Unfortunately, the Royal Commission does not give us a comprehensive breakdown of the ages of the alleged victims of child sexual abuse. We are given an average age—11.4\textsuperscript{50} (10.4 in private sessions)\textsuperscript{51} years of age for all claimants—and percentages of alleged victims who were under 13 and over 13. Therefore, we do not know how many of the 40% of alleged victims over 13 were in fact legal acts at the time of the alleged offences. Accordingly, we do not have a clear sense of the percentage of alleged acts of child sexual abuse in the above-described grey area—for example, the percentage involving 16- or 17-year-olds. This is important given that many Australian legislators and citizens evidently do not regard these cases as instances of child sexual abuse (even if they might on other grounds, nevertheless, regard them as instances of the more general category of sexual exploitation). For it may well be that the percentage of 16- or 17-year-old youths in question is quite high. If so, in light of Australian legislators’ and (presumably) citizens’ understanding
of what counts as a child, the Royal Commission’s calculation of the number of alleged child sexual abuse victims will result in an inflated number.

4. **Historical cases of child sexual abuse**

The findings of the Royal Commission show that there was a peak in the (alleged) incidents of child sexual abuse in the sixties and seventies followed by a sharp decline in the mid-eighties. This figure is consistent with overseas inquiries. Yet a problem with the current numbers arises because, on average, allegations of child sexual abuse in the Catholic Church in Australia have occurred 33 years (or 23.9 years in general, depending on which report is accessed) after the alleged incident. Consider this quote from the chair of the Royal Commission, Justice McClellan:

> And, as you know, once out in the public domain, many more people have come forward. I mean, thousands have come to this Commission, many of whom had never been to anyone else before.

Many reasons are given for the delay in reporting alleged offences. Some victims of child sexual abuse did not feel confident reporting offences at the time of the offence. In the case of recovered repressed memories, the claimants did not remember that they had been abused. Still others came forward because of the Royal Commission.

Therefore, as the Royal Commission suggests, it is possible that the current figures of actual incidents of child sexual abuse—as well as, of course, the allegations of child sexual abuse on which they are based—are underestimated. However, it is highly unlikely that the number of actual acts of child sexual abuse in the 2000s and since is anywhere nearly as high as the corresponding (proportionate) number for the sixties and seventies. For one thing, as things stand and as just stated, the number of incidents of child sexual abuse that allegedly took place since 2000 is much lower proportionally than the corresponding number for the sixties and seventies. Accordingly, there is a presumption in favour of the proposition that the actual rates of child sexual abuse in the Catholic Church over this period sharply declined; the Royal Commission has not shown otherwise but has merely offered a contestable speculation. For another thing, in relation to the period from the early sixties to late eighties, there was a noticeable drop in the offences alleged to have taken place in the eighties—some 30 years ago.
Certainly, research funded by the Royal Commission claims that there has been a decline in child sexual abuse over the past 15–20 years, including in the church in Australia. Most important is the current situation in the Catholic Church in Australia as it is reported in the findings of the Royal Commission. In the period 2000 to 2010, fewer than 10 Catholic priests in total were the subject of a first allegation of child sexual abuse. For the period commencing 2010, this number dropped to less than five. During the period 2000 to 2010, 0.1 per cent of Catholic priests were the subject of a first allegation of child sexual abuse. Generally, in the nineties to today there are very low numbers of first reported cases of child sexual abuse. Among those that have been reported, the majority of the offenders are lay people, not priests. Of the claims in the private sessions that related to religious institutions, 90 per cent of the claims concerned allegations of child sexual abuse that occurred before 1990, 5.8 per cent of the claims concerned allegations that occurred post 1990, and 4.2 per cent of the claims did not include a date.

Furthermore, the delay in reporting—sometimes a delay of decades—is significant. It is extremely difficult, if not impossible, for the church to take action against an offender in the immediate aftermath of the offence if the offence has not yet been reported and will not be reported for some decades. Moreover, for evidentiary reasons among others, it is even difficult for the church to take action against such offenders decades after their offences given these offences were not reported at the time of their offences but only decades later.

It has been argued that incidences of child sexual abuse in the Catholic Church in the US peaked in the sixties and seventies, at least in part because of the social and cultural context of the time—for instance, increased levels of deviant behaviour in society in general. This analysis has been widely criticised. However, it is worth considering that there were a number of paedophile promotion groups operating openly in the seventies. These organisations include, among others, the Paedophile Information Exchange (PIE), which operated in England. This group began in 1974 and disbanded a decade later. Also, the North American Man/Boy Love Association (NAMBLA) was formed in the seventies—it continues to this day.

As mentioned above, the John Jay report argued that there was a general increase in deviant behaviour, particularly in the seventies, which contributed to increased numbers of child sexual abuse. The John Jay report also argued
that there were a number of contributing factors that led to a decrease in child sexual abuse. The following is a quote from the John Jay report:

factors specific to the Catholic Church caused the decline in the mid-1980s . . . At the time of the peak and subsequent decline in sexual abuse incidents by Catholic priests, there was a substantial increase in knowledge and understanding in American society about victimization and the harm of child sexual abuse; changes were made in relation to statutes related to rape and sexual abuse of children and reporting requirements of child abuse and neglect; an understanding of sexual offending advanced; and research related to the treatment of sexual abusers was expanded.\textsuperscript{60}

The decline in the numbers of allegations of child sexual abuse in Australia can similarly be attributed to a growing awareness of the damage of child sexual abuse, improved vetting and reporting processes in the church, improved child safety processes in the church, better training for priests, the creation of government laws, and a greater awareness of the psychology of offenders.\textsuperscript{61} Today there is evidence of an acceptable approach to claims of child sexual abuse. Consider the following quote from the Sydney Archdiocese.

Sexual abuse of children is a shameful and serious crime. Serious mistakes have been made in the past however the church has been working for a number of years to improve our response to sexual abuse. A significant break was made in 1996 with the establishment of Towards Healing, the national process established by the Australian bishops and religious orders which the Archdiocese follows. We recognise the police are best placed to investigate sexual abuse allegations. Towards Healing requires allegations of criminal conduct to be reported to the police and other authorities.\textsuperscript{62} Since it was established there have been two independent reviews in 1999–2000 and 2008–09.\textsuperscript{63}

Presented below is a list of changes that occurred in the Catholic Church in Australia from the late eighties onwards that are likely to have contributed to a reduction in child sexual abuse in Catholic Church institutions in Australia.
1988
- The Australian Catholic Bishops Conference (ACBC) formally discusses the issue of child sexual abuse in the Catholic Church.
- Church leaders begin to coordinate their responses to victims of child sexual abuse.

1989
- The ACBC drafts a series of protocols and recommends a nationally consistent approach to child sexual abuse.\(^{64}\)

1992
- Fr Brian Lucas visits the US and Canada and reports back to the ACBC Special Issues Committee advising that offending priests should not be returned to active ministry.

Mid-1990s
- A general understanding emerges amongst church leaders that alleged perpetrators of child sexual abuse cannot be kept in ministry where they have contact with children.
- Preventative strategies are put in place.\(^{65}\)
- Priests are put on administrative leave while a compliant is being assessed.\(^{66}\)
- Priests are sent for psychological assessment and therapy after receiving a complaint.\(^{67}\)

1996
- The Melbourne Response, a local redress scheme, is created and implemented to address the needs of victims of child sexual abuse.

1997
- Towards Healing, the nationwide response to victims of child sexual abuse, is established.\(^{68}\)
- The church sends offending priests to Encompass, a residential treatment program for sex offenders (1997–2008).\(^{69}\)

1999
- From 1997, the Catholic Church in Australia works to improve the processes in Towards Healing.
- The National Committee for Professional Standards engages Professor Patrick Parkinson AM to conduct an independent review.
of Towards Healing. Parkinson’s recommendations are discussed and Towards Healing is implemented.

2001
• The new version of Towards Healing comes into effect.\textsuperscript{70}

5. Lay offenders and peer offenders in the Catholic Church

One of the lesser known findings of the Royal Commission is that not all of the offenders in the Catholic Church are priests. In the private sessions, 53.1 per cent of the claimants alleged that a layperson sexually abused them—for example, teachers, residential care workers, house masters, volunteers, ancillary staff, and foster carers.\textsuperscript{71} In the Catholic Church data, the numbers of alleged offenders are as follows: 37 per cent were non-ordained religious brothers or sisters, 30 per cent were priests, and 29 per cent were lay people.\textsuperscript{72} These figures are significant not only for the misunderstanding that priests are more likely to commit acts of child sexual abuse than other members of the community but also for the Church itself, where sharp divisions have occurred between priests and lay people with regard to the findings of the Royal Commission.

It is also worth noting that some of the alleged lay offenders were children themselves.\textsuperscript{73} For instance, an incident might involve a 15-year-old youth worker and another youth. Of the claimants in the private sessions, 13.4 per cent alleged that they had been abused by another child.\textsuperscript{74} Of course, these claims are serious, but surely they ought to be differentiated from claims of child sexual abuse involving an adult and a child. For one thing, the latter involves issues of maturity and power imbalance not necessarily present in the former.\textsuperscript{75}

6. Summary

I conclude that there are significant deficiencies in the methodology of the Royal Commission inquiry into child sexual abuse in the Catholic Church and, as a consequence, a number of its key findings are misleading or lacking in evidential support. This problem is further compounded by the media’s largely distorted reporting of the Royal Commission’s findings. In short, the general public, having relied on the findings of the Royal Commission and, in particular, on the media for information regarding the findings of the Royal Commission, are now ill-informed in relation to the nature and
extent of child sexual abuse in the Catholic Church. Unfortunately, members of the general public are—not infrequently—acting on this “information”, including by ceasing their attendance at church and, in some extreme cases, by shouting abuse at priests they see on the streets and by vandalising churches. Moreover, it is a disservice to the large numbers of actual victims of serious child sexual abuse perpetrated by priests and others to offer a distorted overall perspective of the nature and extent of the problem, whether that be to underestimate or overestimate it.

Let me now briefly summarise my more specific findings. The Royal Commission’s use of the word “survivor” is misleading, since all those who made a claim of child sexual abuse in the Royal Commission’s private sessions are termed survivors even though most of these claims were not verified by the Royal Commission. It is important to note that the Royal Commissions Act 1902 was amended so that the Royal Commission could hear allegations of child sexual abuse without cross-examining witnesses. Quantitative data extracted from these sessions was presented as if the allegations of child sexual abuse made in these sessions were necessarily true rather than legally untested and, therefore, unsubstantiated claims.

The section on unsubstantiated claims begins with selected quotes from legal professionals who have criticised the Royal Commission’s decision not to verify accounts of child sexual abuse. I distinguished various types of false claims, including vexatious false claims, false claims that are made to fraudulently obtain compensation money, misunderstandings, and false recovered repressed memories. The Royal Commission relied heavily on recovered repressed memories. However, it is generally understood that these types of claims cannot be accepted as true without corroborating evidence.

I detailed problems with the Royal Commission’s use of child sexual abuse complaints data provided by the Catholic Church. The weighted methodology used by the Royal Commission inflates the percentage of priests who were the subject of allegations of child sexual abuse. A further problem is the lack of any differentiation in respect of the seriousness of offences; the serious are lumped together with the less serious.

Unfortunately, the media has further compounded the problem by a misleading presentation of the actual findings of the Royal Commission—for example, alleged offences are treated as actual offences, and those alleged to have committed an act of child sexual abuse are referred to as paedophiles, even though many of the cases involve post-pubescent children.
An important conclusion I made is that most of the allegations that were made to the Royal Commission were historical claims—that is, claims in relation to incidents that happened many decades ago. A large portion (86 per cent) of the claims relate to the period 1950 to 1989 inclusive. I argued that it is highly likely that cases of child sexual abuse have substantially decreased in the church because of a growing awareness of the damage of child sexual abuse, a growing awareness of the psychology of offenders, the implementation of preventative and reactive structures in the church, and the creation of government laws.

It is also not widely reported in the media that not all of the claims in the Royal Commission related to priests. For example, 53.1 per cent of the claims that were made in the private sessions related to alleged abuse that was committed by lay people. Another 13.4 per cent relate to abuse that was committed by children. The general assumption in the community that acts of child sexual abuse in the clergy are higher than in the general public is plainly wrong. Unfortunately, a child is at greater risk at home than a child is at a church. As noted by Justice McClellan in the opening address at the final sitting of the Royal Commission:

The Royal Commission has been concerned with the sexual abuse of children within institutions. It is important to remember that, notwithstanding the problems we have identified, the number of children who are sexually abused in familial or other circumstances far exceeds those who are abused in institutions.\textsuperscript{77}

There are two striking conclusions from my analysis in this article. First, the figures of child sexual abuse reported in the media are likely to be inflated and, as presented, misleading. Second, the “crisis” of child sexual abuse in the church is essentially a historical problem. In keeping with these conclusions, my first recommendation to the church in Australia is that it make these conclusions known to the Royal Commission and to the general public. My second recommendation is that constructive proposals—for example, in terms of redress to victims of child sexual abuse perpetrated by priests—be seen in the light of these conclusions and framed accordingly.
Endnotes


2 As I argue below, there are problems with the findings of the Royal Commission. As I also argue below, there are problems with how the findings of the Royal Commission have been reported in the media. These two sets of problems are related as the Royal Commission had a policy of engagement with the media. Furthermore, the Royal Commission had its own media and communications department which facilitated targeted media releases.


Guilliatt, “Child Sex Abuse Inquiries Stance on Recovered Memories”.


R v Jenkyns (1993) 32 NSWLR 712 at 714

Speaking the truth in love (Eph. 4:15)

the-disputed-memories-of-child-abuse-activist-cathy-kezelman/news-story/fb0b24837c3955ad1ff441029e88f7c3.

24 Guilliatt, “Child Sex Abuse Inquiries Stance on Recovered Memories.”


33 As far as we can ascertain from the data that we have to work with.


37 Royal Commission, Analysis of Claims of Child Sexual Abuse Made with Respect to Catholic Church Institutions in Australia, 227.


41 Royal Commission, Analysis of Claims of Child Sexual Abuse Made with Respect to Catholic Church Institutions in Australia, 33.


43 Royal Commission, Analysis of Claims of Child Sexual Abuse Made with Respect to Catholic Church Institutions in Australia, 4.

44 Kaufman and Erooga, Risk Profiles for Institutional Child Sexual Abuse, 53.


Kaufman and Erooga, Risk Profiles for Institutional Child Sexual Abuse, 51.

Royal Commission, Analysis of Claims of Child Sexual Abuse Made with Respect to Catholic Church Institutions in Australia, 22.


Royal Commission, Analysis of Claims of Child Sexual Abuse Made with Respect to Catholic Church Institutions in Australia, 9.

Note that the mandate to report crimes of child sexual abuse was made in 2010.


Royal Commission, Analysis of Claims of Child Sexual Abuse Made with Respect to Catholic Church Institutions in Australia, 10.


