

Submission to Inquiry into the handling of Child Abuse by Religious and Other Organisations

Introduction

My name is Bernd Bartl. I was baptised in the Roman Catholic church and I am a member of a parish in the Roman Catholic Archdiocese of Melbourne. One of our children, our second son Anthony, was injured by a car on 19 November 1986 in Kensington, [REDACTED]

I have lectured in ethics at Melbourne and Monash Universities and I tutor at both under casual staff contracts, and I am currently completing my Ph.D. in the School of Historical and Philosophical Studies at the University of Melbourne.

I understand the purpose of the parliamentary inquiry to be an assessment of whether there is anything in the nature of churches, religious and other non-government organizations which require measures beyond those already in place to properly deal with child sexual abuse.

I believe our experience will assist with this task, and I make some recommendations in order to further the purposes of the inquiry.

Summary

In summary, this submission wants to draw attention to and recommend on the following:

1. That some Roman Catholic officials and employees cannot be trusted to do the right thing in relation to criminal sexual abuse and, therefore, that mandatory reporting by them of child sexual abuse be legislated for. Relatedly, that the gaining of the knowledge of child sexual abuse by way of the sacrament of penance/ reconciliation = confession, be no exemption to such mandatory reporting.
2. That Roman Catholic officials almost invariably use every (lawful) means available to them to avoid civil penalties (eg. financial compensation), and that these loopholes must be plugged, since to continue to allow this evasion is to continue to allow a gross injustice.
3. That I wish to register my deep shame at the conduct of Roman Catholic officials, 'leaders' by title and presumption, in failing to act to prevent terrible damage to children and others and, indeed, often to hide the truth, fail to listen to those badly harmed, abysmally fail to show compassion and justice and, worst of all, to maintain or place the perpetrators in positions which allowed them to continue to do enormous harm. This is neither to assert a) that religious officials are expected to be morally superior to other people, nor b) that I am in any way morally exemplary myself, but, rather: to assert that it is incumbent on us when we have done wrong ourselves, to fully and properly acknowledge our wrong done, seek to provide full and proper redress, and seek, or at least be open to and accept, whatever punishment is meted out; then, and only then, does it begin to be fitting to speak of being sorry and of hoping for forgiveness. This is the real nub of moral leadership, together with helping others to conduct themselves similarly when having done wrong, and being deeply compassionate to those wronged.

Background

Sexual abuse has become a regular item in the news. This is not to say that it is ever anything other than devastating for those abused and those that care for and about them.

It has been widespread in the military for decades.¹ It is widespread in government agencies.² It happens in non-government agencies.³ There are sexual abuse scandals in sports institutions (Penn State football team).⁴ And, in many of these instances, cover-ups of various durations and by various more senior people, have occurred.

The question for the inquiry is, then, whether any of the legislative or government measures which apply across the board to deal with sexual abuse, particularly child sexual abuse, are somehow ineffective or avoided by some or all religious and other non-government organisations.

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¹ The Age, 11 July 2012, "Rapists in the ADF ranks" at <http://www.theage.com.au/opinion/political-news/rapists-in-the-adf-ranks-20120710-21u48.html>

² The Age, 16 July, 2012, "Abuse by carers 'covered up' " at <http://www.theage.com.au/victoria/abuse-by-carers-covered-up-20120715-224e2.html>

³ The Age, 29 June, 2012, "Yooralla carer on sex charges" at <http://www.theage.com.au/victoria/ooralla-carer-on-sex-charges-20120628-215ge.html>

⁴ New York Times, 23 June 2012, "Sandusky Guilty of Sexual Abuse of 10 Young Boys" at <http://www.nytimes.com/2012/06/23/sports/ncaafootball/jerry-sandusky-convicted-of-sexually-abusing-boys.html?pagewanted=all>

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Mandatory reporting
Mandatory reporting is already required for various categories of people working with children.

Given the inability and unwillingness of many Roman Catholic officials to report these crimes to the police when they learn of them, they too should be required by law to report. To exclude the reporting of child sexual abuse of which ordained priests learn during the sacrament of penance, also known as the sacrament of reconciliation or confession, would be a mistake.

The names for this sacrament are quite revealing. 'Sacrament of penance' indicates one of the purposes of this sacrament: it is a sign of the person seeking absolution wanting to expiate the wrongdoing by willingly suffering the punishment due. 'Sacrament of reconciliation' no doubt can be taken as a reference to seeking to restore a broken relationship with God but, absolutely equally importantly, it also seeks to repair a broken relationship with any person wronged. Being sorry, sorrow at what one has done, being prepared to restore and compensate to the extent possible, and being prepared to suffer any consequent punishment, is central to this understanding of true reconciliation. 'Confessing' also, has the clear connotation that one is being frank and fully admitting the wrong one has done.

There is thus no reason for exempting knowledge of child sexual abuse gained during 'confession', since any punishment which may be forthcoming from that knowledge being revealed by the priest, is simply part of the ordinary understanding of what the 'sacrament of penance' means, if it is to be meaningful at all.

Recommendation 1

That there be legislation of mandatory reporting of sexual abuse by officials and employees of churches and other religious organisations.

Civil and criminal compensation

The means of obtaining redress for the wrong suffered at the hand of church officials and employees, from the appropriate Roman Catholic heads, is unbelievably difficult.



a) Criminal compensation

I am not aware of anyone having succeeded in gaining compensation under the Confiscation Act 1997, for the wrongs done by church officials and employees using church property.

I presume the difficulty with pursuing this course of action is due to the wording in 'Division 1A—Tainted property substitution declaration—forfeiture order', namely:

s.34A Interpretation

- (1) For the purposes of this Division, property is not available for forfeiture if the accused does not have an interest in the property.

To require automatic compensation from the organisation who has the perpetrator as an official or employee, upon conviction of the perpetrator, seems a very reasonable, and the Confiscation Act 1997 should be changed accordingly.

The church property on which the crimes are committed would not have to be sold, necessarily, but an equivalent amount would have to be made available from church sources.

In some cases this may be a more expedient way to provide compensation than for the victim-survivor having to go to court again for civil compensation.

b) Civil compensation

The legal status of the Roman Catholic church, its officials and employees, poses numerous and large problems, some insuperable, for to gain proper and just compensation.

I note, for example:

In 2000, a former student successfully sued the State of Victoria for the failure by a government school principal and deputy principal to report what was found should have amounted to a reasonable suspicion that the child had been and was being sexually abused (*AB v Victoria*, 2000;1 Briggs & Potter, 2004). The action was in negligence, with the failure to report occurring in 1991-92, before the introduction of legislation in Victoria in 1993 which compelled teachers to report suspected child sexual abuse. The student was awarded \$494,000 in damages for the contribution of the failure to report to her subsequent suffering of abuse by her stepfather and consequential injury.⁵

There seems to be no such successful compensation action in Victorian courts.

Only the difficulties in suing 'the church' as the 'legal personality' responsible, seems to be the explanation. Yet the role of the bishops in a diocese is very comparable to the role of, say, a State government Minister, but appears to not be able to be held accountable for the damage caused.

This might be tolerable if there was no State involvement in this situation. However, there is.

The Roman Catholic Trusts Act 1907 and the Religious and Successory Trusts Act 1958, and there may be others, are Victorian Acts which give protection and control to the Bishop (in the case of the Melbourne Archdiocese, the Archbishop) for large property holdings, but seemingly little or no responsibility for how those properties are used, and how officials and employees of the diocese/ archdiocese conduct themselves or have conducted themselves in the past.

Whether it is done with a 'deeming' provision (i.e. deeming the bishop/archbishop to be able to be sued for past and present acts or omissions), or in some other way, the church as a whole needs to be able to be held to account. The State should not be in the business of protecting church property and giving the bishops virtually totally control of the property, on the one hand; and, on the other, to not give the protections and means to fair redress of victims-survivors of sexual abuse.

Recommendation 2

That there be legislation by the Victorian parliament:

- i) To enable victim-survivors of sexual abuse to be able to claim compensation in relation to property used in the crime, under the Confiscation Act 1997, once the perpetrator has been convicted.
- ii) for a 'deeming' provision (i.e. deeming the bishop/archbishop to be able to be sued for past and present acts or omissions), or in some other way, for the Roman Catholic dioceses and other religious organisations to be able to be sued for wrongs by victim-survivors of sexual abuse.

Shame and sorrow

I reiterate that I am deeply shamed by the conduct of my church, its officials and employees, including at the highest levels, and am enormously sad at the horrors inflicted and spread and heartlessly covered up and legally stonewalled.

⁵ Mathews, Ben and Walsh, Kerryann (2004) Issues in mandatory reporting of child sexual abuse by Australian teachers. *Australia & New Zealand Journal of Law and Education* 9(2):pp. 3-17.

Something needs to be done to deal with these matters justly and compassionately, when the organisation responsible is either unable or unwilling or both.

Bernd Bartl
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