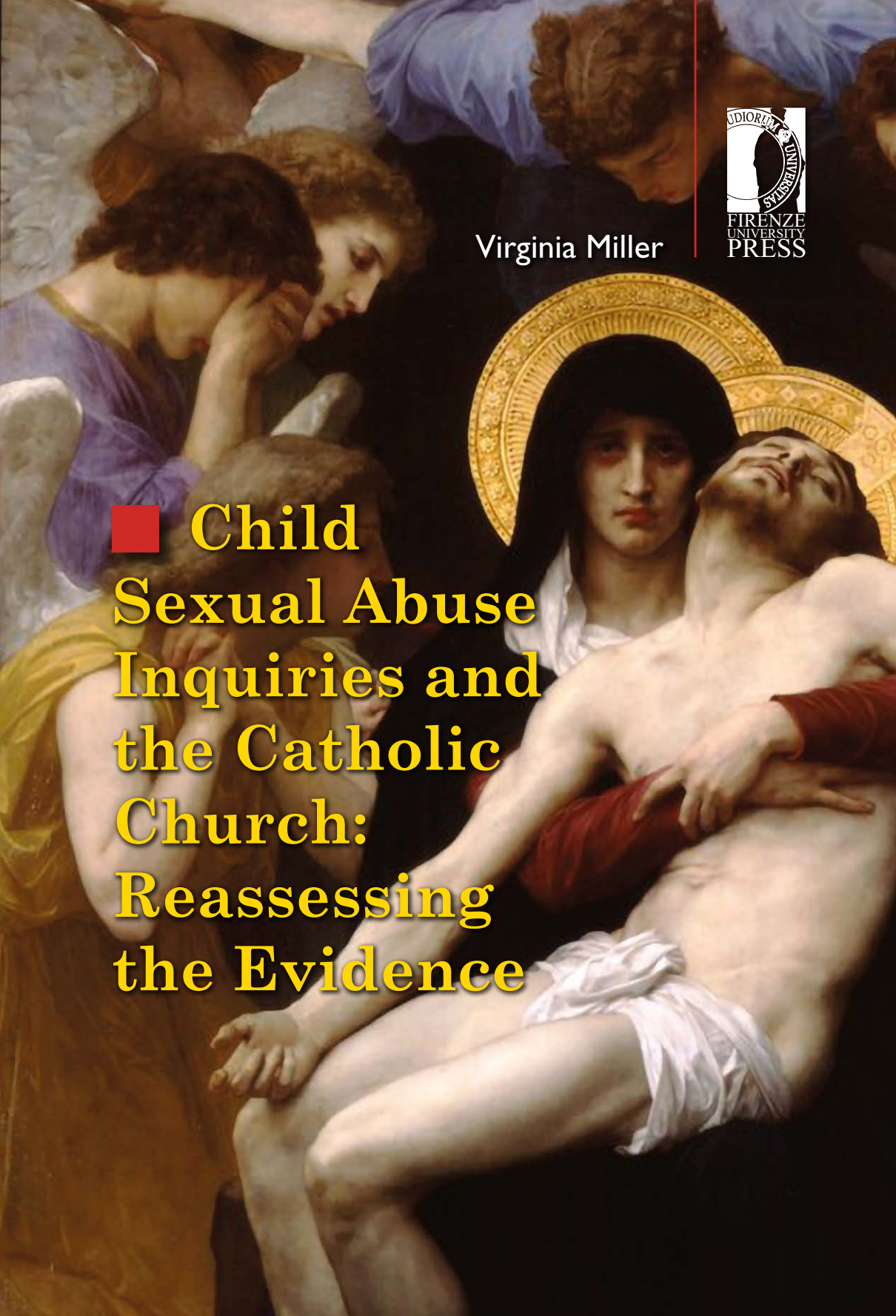

Virginia Miller

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Material in this book that has been previously published is as follows: Chapter Four, in part, has been published in the *Italian Insider; ABC Religion and Ethics; Life in Abundance*; and *St Mark's Review.*

Abbreviations

ACBC	Australian Catholic Bishops Conference
ACR	Anglican Centre in Rome
ACT	Australian Capital Territory
CDF	Congregation for the Doctrine of the Faith
CICSA	The Commission to Inquire into Child Sexual Abuse
CRA	Catholic Religious Australia
DSM	Diagnostic and Statistical Manual of Mental Disorders
DACI	The Dublin Archdiocese Commission of Investigation
HSE	Health Services Executive
IICSA	Independent Inquiry into Child Sexual Abuse
NCCB	The National Conference of Catholic Bishops
OCYP	Office of Child and Youth Protection
RCIHAC	The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith- based Institutions
RCIRCSA	Royal Commission into Institutional Responses to Child Sexual Abuse
USCBC	United States Catholic Bishops Conference

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Introduction

Child sexual abuse is both morally repellent and a criminal offence. Moreover, it has ruined the lives of many of its victims and done significant damage to those communities and institutions in which it has been prevalent. The Catholic Church has been the site of many instances of serious child sexual abuse. Moreover, members of the Catholic Church failed to report many instances of serious child sexual abuse to the police and covered-up instances of child sexual abuse. For example, the case of the convicted, and now de-frocked, priest Gerard Ridsdale is particularly damning for the Catholic Church in Australia. Ridsdale was convicted of abusing 65 children, including the charge of rape. These offences are heinous – two of the victims were abused only hours after their father's funeral. There is evidence to suggest that some members of the Church knew of Ridsdale's crimes but did not contact the police and ensure that children were protected. The victims suffered tremendously from Ridsdale's abuse at the time and later in life when many suffered from relationship problems, drug and alcohol abuse, lost opportunities because of the disruption to their schooling etc. Furthermore, it has been argued that Ridsdale's crimes contributed to the suicides of ex-altar boys[1]. There are many more, possibly thousands, of harrowing cases of child sexual abuse committed by church workers, including priests, in

[1] We note that Ridsdale's acts of child sexual abuse and those of most of the other perpetrators of horrific child sexual abuse were not discovered by the investigations of inquiries. The remit of these inquiries was to investigate the responses of the Church and other institu-

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Ireland, the United States, and Australia – the three countries dealt with by the commissions of inquiry that this work is, primarily, concerned with. Accordingly, the fundamental fact that needs to be acknowledged at the outset of this work is that thousands of the Catholic Church's priests, church workers, bishops et al. in Ireland, the United States, and Australia are alleged to be, or were, alleged to be responsible for widespread child sexual abuse over a lengthy period of time, either as perpetrators or as, in effect, protectors of perpetrators. What the actual scale of this child sexual abuse was, and over what period of time, is the subject of this present work, as is the actual response of the Catholic Church to child sexual abuse.

In answering these questions, we rely on what we will refer to as (respectively) the Irish Inquiry, the John Jay Inquiry (United States), and the Australian Inquiry (of which more below). We acknowledge the importance of these inquiries in shedding light on child sexual abuse in the Catholic Church and rely on these inquiries for their statistical data in particular. However, we also critically analyse their methodologies and findings, and identify shortcomings as appropriate. Official inquiries ought not themselves to be exempt from scrutiny. The importance of this point is graphically illustrated by, what have turned out to be, deeply flawed inquiries. One such inquiry is the *Pennsylvania Grand Jury Report*. This report was deemed to be in breach of the *Investigating Grand Jury Act* by the Supreme Court of Pennsylvania in 2019. Indeed, some of its findings were ordered to be sealed permanently. Of particular concern, the Supreme Court justices argued that the *Pennsylvania Grand Jury Report* did not protect people from the harm of unproven allegations. For example, «…it is not "in the public interest", as contemplated by the Act, to utilize an investigating grand jury report to mete out punishment or provide relief for specific victims of unproven, albeit serious, crimes when the traditional means of bringing an individual to justice – e.g. – criminal prosecution – are otherwise unavailable» (Baer 2019, 10).

We have chosen to analyse the Irish Inquiry, the John Jay Inquiry, and the Australian Inquiry for the following reasons. The Irish Inquiry was the most prominent inquiry into child sexual abuse in the Catholic Church and influenced later inquiries. This book analyses three component inquiries of what is referred to as the Irish Inquiry, namely, the *Commission to Inquire into Child Abuse* (Ryan Report), the *Dublin Archdiocese Commission of Investigation* (Murphy Report) and, the *Report into the Catholic Diocese of Cloyne* (Cloyne Report). The Irish Inquiry's influence on later inquiries has been beneficial in a number of respects. However, its influence has been unhelpful in other respects. For instance, some later inquires imported methodological errors from the Irish Inquiry. The John Jay Inquiry into the Catholic Church in the USA was chosen because of its significant impact in this area of research and because subsequent inquiries often reference the conclusions of the John Jay Inquiry. The John Jay Inquiry comprised

tions to allegations of child sexual abuse, or in the case of the John Jay Inquiry to analyse the nature, causes and the extent of the problem.

of two reports: *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950-2002*; and *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010*. The Australian Inquiry, *the Royal Commission into Institutional Responses to Child Sexual Abuse*, was selected because it is the most recent of the international inquiries into child sexual abuse that has been completed. Moreover, it was chosen because the current UK inquiry, *the Independent Inquiry into Child Sexual Abuse*, and the current NZ Inquiry, *the Royal Commission of Inquiry into Historical Abuse in Care* both worked in consultation with the Australian Royal Commission. The UK and NZ inquiries have imported not only some of the strengths but also some of the weaknesses of the Australian Royal Commission; weaknesses we outline in Chapter Three. Please see Appendix One for a fuller discussion of *the Independent Inquiry into Child Sexual Abuse* and Appendix Two for a fuller discussion of *the Royal Commission of Inquiry into Historical Abuse in Care.*

In many of the cases of child sexual abuse by the likes of Ridsdale and others, church leaders failed to protect children and excused the behaviour of offending priests and church workers (Broken Rites, n.d.). These cases have been widely publicised in the media and most people are familiar with at least some of them. Indeed, the media has highlighted the problem of child sexual abuse and has influenced decision-makers. However, notwithstanding this, many media reports, allegedly based on these inquiries, are biased, misleading and contain factual errors. This misleading reporting has resulting in the creation, in the public mind, of a false impression of the extent of child sexual abuse in the Catholic Church; especially of the extent of child sexual abuse in the Catholic Church at the present time. Thus, many media reports fail to make clear that most of the allegations of child sexual abuse (in some inquiries as many as 90%) are allegations concerning events which, if the allegations are correct, took place on average 30 years ago. For instance, a recent prominent article in the Australian media (Ting 2017), while it correctly states the findings of the Australian Inquiry in respect of the number of allegations of child sexual abuse between 1980 and 2015, fails to point out that 94.2% of allegations (regarding the Catholic Church) concern events that are alleged to have occurred prior to 1990, some 30 years ago (RCIRCSA 2017, Vol. 16, Book 1, 17). In short, as will emerge in this book, what has been called the 'crisis' of child sexual abuse in the Catholic Church, in so far as it relies on the evidence provided by these inquiries, is, in large part, an historical problem at least in Ireland, the United States, and Australia[2]. Furthermore, media reports also fail to make clear that safeguarding mechanisms and redress schemes introduced in the Catholic Church in the mid-late nineties have evidently been effective since reported incidents of child sexual abuse, in the Catholic Church in the Western world, in recent years are very low.

[2] But also in a number of other countries in which official inquires have been undertaken, e.g. Netherlands (Deetman 2011).

Furthermore, it is not often reported that many of the allegations made to inquiries into child sexual abuse are untested and certainly contain some instances of false reports, define a child as someone under 18 years of age (and, therefore, potentially above the age of consent), and contain allegations of child sexual abuse across a wide spectrum, from less serious non-contact abuse to violent gang rapes.

Regarding false allegations, perhaps the most spectacular example is that of the allegations made against Cardinal George Pell in Australia. In 2020 the High Court of Australia quashed the criminal charges made against Pell – that he had raped two choir boys in the sacristy of the Catholic Cathedral in Melbourne immediately following mass in 1996. These charges were quashed on the grounds that it was highly improbable, if not impossible, that the alleged offences could have taken place (Keifel et al. 2020). For a more detailed discussion see section 3.12. The Pell case is now seen as a textbook case of a miscarriage of justice.

This book stands in contrast to the overall media reporting of the problem of child sexual abuse in the Catholic Church. This book strives to be an objective, evidence-based analysis of child sexual abuse in the Catholic Church and of the responses of the Catholic Church to it. Commentary on this subject is often characterised more by emotion and ideology (whether radical or conservative) than by a commitment to the facts and to principles of reasoning. As already mentioned, the book relies in large part on the evidence provided by the three key inquiries into child sexual abuse in the Catholic Church conducted in Ireland, the USA, and Australia respectively, i.e. it relies on the best available evidence. Based on this evidence, we outline the extent of child sexual abuse in the Catholic Church in Ireland, the USA, and Australia during the periods in question. The extent of this child sexual abuse is, unsurprisingly, a damning indictment of the Catholic Church. However, also based on this evidence, we draw two conclusions that many will find surprising, especially in the light of the overall media coverage. Firstly, child sexual abuse in the Catholic Church in the countries surveyed, while widespread during the 1960s and 1970s in particular, is largely an historical problem. Secondly, a significant array of safe-guarding mechanisms and other initiatives, such as training programs, have been introduced into the Catholic Church since the 1990s. Moreover, given the sharp decline in allegations of incidents of child sexual abuse alleged to have occurred since the 1990's, overall, these mechanisms appear to have been effective in curbing child sexual abuse. That said, a number of processes that the Catholic Church put in place seem not to have been effective. For instance, the Catholic Church provided psychological and counselling services to offenders and these proved ineffective in many cases.

Chapter One is an analysis of the Irish Inquiry (comprised of the Ryan, Murphy and Cloyne reports). Most of the complaints detailed in the Irish Inquiry concern instances of child sexual abuse that allegedly occurred decades before the complaints were made. A notable feature of the Ryan Report, in particular, are the large number of complaints of child sexual abuse in industrial and reformatory schools which were publicly funded but largely owned and managed by

religious congregations. We note that the industrial schools were closed by the mid-70s and many of the allegations related to events that occurred 40 years prior to the mid-70s.

Chapter Two is an analysis of the John Jay Inquiry into child sexual abuse in the Catholic Church of the USA. The John Jay Inquiry argues that 1970 was the year that most acts of child sexual abuse began, with incidents of child sexual abuse peaking in 1980. Furthermore, according to the inquiry more abuse occurred in the seventies than in any other decade, and, importantly, there are few allegations of incidents of child sexual abuse in the Catholic Church in the USA that are alleged to have happened in recent years. That said, this is not to deny that child sexual abuse still occurs in the Church, and may well occur in larger numbers than are reported, given delays in reporting child sexual abuse.

Chapter Three offers an analysis of the findings of the Australian *Royal Commission into Institutional Responses to Child Sexual Abuse*, as far as they relate to the Catholic Church in Australia. As with the Irish Inquiry and the John Jay Inquiry, the evidence provided by the Australian Royal Commission points to significant child sexual abuse in the Catholic Church. However, again as with the Irish Inquiry and the John Jay Inquiry, it also indicates that the 'crisis' of child sexual abuse in the Catholic Church is, in large part, an historical problem. Again, 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 in Australia, e.g. that a significant number and percentage of currently serving priests are child sex offenders.

A notable feature of the Catholic Church in Australia's response to child sexual abuse in its ranks was the design and implementation of one of the world's first redress schemes for victims of child sexual abuse. This redress scheme was put in place in 1996 prior to the establishment of the Australian Inquiry and thus prior to the redress scheme introduced in 2018 as a result of the Australian Inquiry.

In addition to outlining the nature, extent and historical time frames of child sexual abuse in the Catholic Church in the three countries, we discuss the key recommendations made by each of the three inquiries concerning child safety measures in the Catholic Church, in particular. We also outline the child safety measures introduced by the Catholic Church, both prior to and in response to these recommendations, e.g. changes in reporting procedures. Child safety measures introduced by the Catholic Church since the 1990s in the USA, for instance include, new procedural laws and policies, developments in seminary training that engage with the topic of child sexual abuse, better vetting processes, the creation of committees to respond to the problem, and the creation of redress schemes for victims of child sexual abuse. As mentioned above, we argue that the evidence suggests that, by and large, these safeguarding mechanisms have been successful in preventing child sexual abuse in the Church and that, generally, complaints are now handled in an effective manner. It is also argued that there is still room for improvement and in some dioceses, considerable improvement.

In closing this overall introduction, we reiterate that the focus of this book is analyses of three of the most important global inquiries into child sexual abuse and their recommendations. A discussion of the impact of child sexual abuse, especially its harmful effects on victims, is beyond the scope of this work. Moreover, there has already been much written on this subject[3]. However, it is worth stressing once again that the harm of child sexual abuse is very great. For instance,

> Child sexual abuse is, according to studies, linked with depression and post-traumatic stress disorder, emotional and behavioural problems, interpersonal relationship difficulties and suicidal behaviour in both childhood and adult life, which places children at further health and emotional risk. It is recognised that where child sexual abuse is perpetrated by a clergyman, its impact on the victim can have additional consequences such as a loss of faith and an alienation from religion. Many victims have spoken of the profound sense of loss this has caused. Research on clerical sexual abuse carried out in Ireland indicates that when victims reported their abuse and received an inadequate response from church authorities, they experienced re-traumatisation (The Ferns Inquiry 2005, 19).

However, what needs also to be stressed, if the nature and extent of child sexual abuse is to be ascertained and, therefore, the harms of child sexual abuse prevented, is the importance of evidence-based research unadulterated by ideology, hysteria and media sensationalism.

Due to word constraints, the focus of this work concerns the significant findings and recommendations of these inquiries. That said, the full reports of these inquiries are available to the public and we encourage readers of this book to read the reports of the commissions of inquiry for themselves. References to details in the reports exist throughout this work. We certainly do not view the commentary in this book as the last work on this important subject. On the contrary, it is our hope that this book will stimulate further discussion on child sexual abuse and the Catholic Church.

We also stress this work focuses on countries which have conducted inquiries into child sexual abuse. In these three countries the Catholic Church has put in place an array of mechanisms to ensure child-safety and done so before and after the respective commissions of inquiry. Indeed, the implementation of these child safety mechanisms has benefited some countries that have not themselves established commissions of inquiry. However, there is obviously a risk that there are unacceptably high instances of child sexual abuse in the Catholic Church in countries that have not conducted their own inquiries and/or have not put in place safeguarding measures to protect children.

[3] Please see Browne and Finkelhor 1986; Briere and Elliott 1994; Spataro et al. 2004.

CHAPTER 1

The Irish Inquiry

1.1. Introduction

This chapter is an analysis of three Irish inquiries into child sexual abuse, *the Commission to Inquire into Child Abuse* commonly called, the Ryan Report, *the Dublin Archdiocese Commission of Investigation,* commonly called the Murphy Report, and, *the Report into the Catholic Diocese of Cloyne* (the Cloyne Report). We have chosen to analyse these inquiries for the following reasons. The Ryan Report was the initial inquiry into abuse in mainly Catholic, institutions. As such it brought the issue of child sexual abuse in Catholic institutions in Ireland to light. We analyse the Murphy Report and the Cloyne Report since both of these reports concentrate on child sexual abuse in Catholic institutions; the focus of this book. The Murphy Report is comprehensive in its treatment of historical acts of child sexual abuse. The Cloyne Report deals with contemporary cases of complaints handling. We do not analyse the Ferns Report in detail since its foci largely overlap with the Murphy Report. However, we do discuss some of the findings of the Ferns Report where it is appropriate and not redundant to do so.

1.2. The historical context

In the process of determining the nature and causes of historical acts of child sexual abuse, the social and institutional context at the time of the abuse is of great importance. Thus, if the Church's responses to child sexual abuse during the period, covered by any given inquiry, are found to be inadequate by that inquiry, then

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these responses must be inconsistent with the standards and expectations of the general community and relevant experts at the times when the Church responded as it did. More specifically, it cannot reasonably be expected that the Church have knowledge – knowledge upon which standards and expectations are based – that is not available to health professionals or other professionals at the times in question.

We note that in 1976 the Department of Health in Ireland published a major report about non-accidental injury to children which did not even mention child sexual abuse. Furthermore, the 1977 Memorandum on Non -Accidental Injury to Children that was based on the report, did not mention child sexual abuse. In 1983 the guidelines from the Department of Health only mention child sexual abuse in passing (The Ferns Inquiry 2005, 11). It is in 1987 that the Department of Health set out procedures for the identification, investigation and management of child sexual abuse. However, these guidelines concerned family members and primary carers of the child. There were no guidelines regarding a child being abused by a third party. The guidelines also did not address historical allegations of child sexual abuse. It was only in the early 90s that a general awareness of the pervasiveness of child sexual abuse in Ireland emerged with a number of high-profile cases including: the Kilkenny Incest Investigation in 1993; the West of Ireland Farmer case in 1995; and the case of Fr Brendan Smyth's arrest in 1994 (The Ferns Inquiry 2005, 12). Between 1995 and 1996, and after many other developments in the Church concerning child sexual abuse, the Framework Document (the Church in Ireland's guidelines for handling complaints of child sexual abuse), was sent to all dioceses. This document advised bishops to report all allegations of child sexual abuse to An Garda Siochana and the Health Board (The Ferns Inquiry 2005, 39). It was at this time (1996) that the Child Care Act 1991was fully implemented by the Government of Ireland (DACI 2009, 100). Accordingly, it could reasonably be argued that the Church's response to the problem of child sexual abuse in its ranks evolved with the broader community's understanding of, and response to, child sexual abuse. This does not necessarily excuse the Catholic Church for its inadequate response to the problem of child sexual abuse any more than it excuses the general community, including the government and its law enforcement, health, social welfare and other agencies for their inadequate response. However, it does mitigate it. See section 1.7. for further details.

1.3. The Commission to Inquire into Child Abuse (the Ryan Report)

The *Commission to Inquire into Child Abuse,* or the Ryan Report, was established in 2000. It was created in accordance with the *Commission to Inquire into Child Abuse Act, 2000* (CICSA 2009, Vol 1, 1.05). The remit of the Commission was to hear evidence of childhood abuse, including child sexual abuse, in Irish institutions (including but not restricted to the Catholic Church). The functions of the Commission were as follows: to hear allegations of child abuse that allegedly occurred in institutions between the years 1914-2000; to inquire into abuse; to determine the causes and extent of child abuse in institutions; and, to

investigate the culpability of relevant institutions. There were two independent committees of the Commission: (1) the Confidential Committee; and (2) the Investigative Committee (CICSA 2009, Vol. 3, 1.05).

1.3.1. The committees

The function of the Confidential Committee was: to hear allegations of childhood abuse from people whose allegations were not investigated and who did not want their allegations to be investigated; to receive evidence of abuse; and, to make proposals and to create reports (CICSA 2009, Vol. 1, 1.08). As far as the data from the Confidential Committee is concerned, most of the allegations related to industrial and reformatory schools. In total, 791 people alleged that they were abused in industrial and reformatory schools. These schools were residential schools which were publicly funded but, largely, owned and managed by religious congregations. Here we note that the Catholic Church was responsible for much of the heavy-lifting regarding child care at this time. 90% of the witnesses were first admitted to residential institutions between 1914 and 1965 (CICSA 2009, Vol. 3, 4.05).

As far as the Investigative Committee is concerned, 552 people attended for an interview. The information gleaned from these interviews led to investigations of institutions of interest. The investigation of these institutions proceeded in three phases. In phase one industrial and reformatory schools of interest were subject to a public hearing. In this phase the relevant religious congregations discussed the general running of their schools and provided information regarding abuse that had occurred in these institutions. Phase two of this process involved private hearings into specific allegations of child abuse in specific schools. In phase three public hearings were conducted in which congregations and other bodies, including the Department of Education among others, were able to respond to allegations (CICSA 2009, Vol. 1, *Executive Summary*).

The Investigative Committee heard allegations of child sexual abuse and had the power to compel witnesses and evidence. However, it did not have the power to investigate or make a determination in regards to allegations of child sexual abuse. For example, the Principal Act that governed the inquiries contained the following rules regarding the report:

Section 13 of the Principal Act, as amended by section 8 of the 2005 Act, dealt with the report of the Investigation Committee, and provided that the report:

a. may contain findings that abuse of children, or abuse of children during a particular period, occurred in a particular institution and may identify –
   i. the institution where the abuse took place, and
   ii. the person or, as the case may be, each person who committed the abuse but only if he or she has been convicted of an offence in respect of abuse,
b. may contain findings in relation to the management, administration, operation, supervision and regulation, direct or indirect, of an institution referred to in paragraph (a), and
c. shall not contain findings in relation to particular instances of alleged abuse of children (CICSA 2009, Vol. 1, 1.16).

Note, this inquiry dealt with claims of all types of childhood abuse whether sexual or otherwise. The focus of this book is child sexual abuse. Therefore, this book does not discuss, at length, other claims of abuse such as claims of physical violence or neglect. Note also, that much of the focus of our analysis of the Ryan Report concerns data provided by the Confidential Committee given that this data is universal in nature.

1.3.2. Record of sexual abuse (male witnesses)

242 males made allegations of sexual abuse in industrial or reformatory schools. The allegations ranged from single-instances of sexual abuse to multiple episodes. For instance, some of the complainants claimed that they were abused for the entire duration of their time at the schools (CICSA 2009, Vol.3, 7.110). In many instances sexual abuse was said to have occurred in conjunction with other forms of abuse, such as physical abuse. The numerical pattern of allegations was not uniform across the schools. Indeed, one of the schools accounted for 29% of the claims. There were 20 schools in total that were the subject of an allegation (CICSA 2009, Vol. 3, 7.111-12). The allegations of child sexual abuse relate mainly to events that allegedly occurred from 1900 until the end of the 1960's (47% of allegations).

The allegations of child sexual abuse were categorized according to the seriousness of the abuse. The categories are as follows: inappropriate fondling and contact (32% – 183 allegations); abuser forcing the child to engage in masturbation of the abuser (16% – 89 allegations); the use of violence (16% – 88 allegations); anal rape (12% – 68 allegations); abuser masturbating the child (9%); oral/genital contact (5%); non-contact abuse (4% – 15 allegations); attempted rape (2%- 14 allegations); kissing (2%); and digital penetration (1%). Note, some allegations concern multiple forms of abuse (CICSA 2009, Vol. 3. 7.117).

In total, there were 246 alleged child sexual abusers. These alleged abusers comprised both lay and religious staff of the schools and others (i.e. visitors, workmen, members of the general public and residents). The largest cohort of alleged abusers were religious care staff (87). The second largest cohort of abusers were co-residents (37). 234 of the alleged abusers were male and 12 were female. 186 of the alleged abusers were identified by their names. It is possible that there is double-counting as far as the 60 unnamed alleged perpetrators are concerned. Of the alleged abusers 164 were professed religious (i.e. non-ordained monks), 42 were lay staff, and 40 were either ex-residents or co-residents (CICSA 2009, Vol. 3, 7.137-38).

1.3.3. Record of sexual abuse (female witnesses)

378 females alleged that they suffered child abuse in girls' industrial and reformatory schools. 128 of these females alleged sexual abuse (CICSA 2009, Vol. 3, 9.07). Most of the child sexual abuse allegations of these females concern events that are alleged to have occurred in the 1960's (CICSA, Vol. 3, 9.09). 119 of the

alleged perpetrators were men and 69 were women. The highest cohort of alleged abusers of women were co-residents (38), weekend or holiday placement carers (23) and work placement providers (17). Or in other words, people who were not priests or church workers. The allegations are categorized in the following way: Inappropriate fondling and contact (38% – 102 allegations); voyeurism (19% – 52 allegations); vaginal rape (10% – 27 allegations); masturbation (8% – 22 allegations); attempted rape/violence (5% – 15 allegations); kissing (5% – 14 allegations); vaginal penetration with objects (4% – 10 allegations); digital penetration (3% – 8 allegations); oral/genital contact (3%- 7 allegations); indecent exposure (2% – 6 allegations); anal rape (1% – 3 allegations) and other (3% – 8 allegations). As with the data concerning the boys' schools, some allegations include multiple forms of abuse (CICSA 2009, Vol. 3, 9.77).

127 complainants from 35 schools alleged that 188 people were responsible for one or more acts of child sexual abuse in these schools. 132 of these alleged abusers were identified by name. There may be some double-counting as far as unnamed alleged abusers are concerned. As far as the roles of the alleged abusers are concerned, 31 were professed religious, 108 were lay people (including family members), and 49 were ex-residents or co-residents (CICSA 2009, Vol. 3, 9.94). The commentary in the report about these numbers is as follows:

> The above table shows that 144 (77%) of those identified as sexual abusers were non-staff members, 79 of whom were external to, but associated with, the schools. They included holiday and work placement providers, relatives and friends of people in those placements, external clergy and clerical students, professionals, and ex-residents. Nineteen (19) other individuals were identified as members of the general public and witnesses' family members who abused them while on leave from the school (CICSA 2009, Vol. 3, 9.95).

1.3.4. Abuse in other church-run agencies

259 males and females made allegations of acts of child abuse that allegedly occurred at various residential institutions and services, including out-of-home care and hospitals, among others (CICSA 2009, Vol. 3, 12.01) (but excluding the above-mentioned industrial and reformatory schools). Some of these agencies were managed by religious congregations and orders. Other agencies were managed by the Department of Education and Health and other secular institutions (CICSA 2009, Vol. 3, 12.03). Of the 259 complainants in this category (CICSA 2009, Vol. 3, 12.04), 58 allege that they were abused in a special needs school. All 14 of these schools were managed by religious congregations – hence, the heavy lifting by the Catholic Church in the area of caregiving. 36 of these 58 complainants alleged that they were sexually abused (CICSA 2009, Vol.3, 13.43). As with other allegations, these allegations vary in respect of their seriousness. At the very serious end of the scale, some complainants allege that they were raped repeatedly (sometimes for up to five years). At the other end of the scale are the less serious (and often ambiguous) allegations. For example,

being stared at by religious care staff who were supervising showers and swimming activities (CICSA 2009, Vol. 3, 13.44 and 13.49). The institutional roles of the abusers were as follows: 20 allegations against professed religious; 13 allegations against lay people, including members of the general public; and 27 allegations against co-residents. Note, there is some double-counting with these numbers since not all of the alleged abusers could be identified (CICSA 2009, Vol. 3, 13.57). The pattern of child sexual abuse allegations was similar in children's homes, foster care facilities and hospitals etc. run by religious congregations and by secular bodies.

1.3.5. Commentary

As we can see from the above information detailed in the Ryan Report, in relation to child sexual abuse in institutions run by the Catholic Church, the problem of child sexual abuse in the Catholic Church and in institutions run by the Catholic Church was extremely serious and, in some instances, horrific. However, it is also, essentially, an historical problem.

The period covered by the Ryan Report was 1914-2000. Yet, most of the allegations of child sexual abuse detailed in the Ryan Report relate to events that allegedly occurred decades before 2000. For instance, the industrial schools were closed by the mid-70s and many of the allegations pertaining to these schools were of acts of child sexual abuse that allegedly occurred 40 years prior to the mid-70s. Indeed, 90% of the witnesses who appeared before the Confidential Commission were first admitted to residential institutions between 1914 and 1965 (CICSA 2009, Vol. 3, 2.05). Moreover, most of the alleged acts of child sex abuse allegedly took place during the period when large scale institutionalisation was the norm, i.e. in the years between the Cussen Report (1936) and the Kennedy Report (1970) (CICSA 2009, Vol. 1, *Executive Summary*).

1.3.6. Criticism of the inquiry.

The Ryan Inquiry was successful in exposing the abuse children suffered in, mainly, residential and reformatory schools in Ireland prior to the mid-70s. This inquiry provided an important platform for victims of child sexual abuse to tell their stories of abuse. However, the inquiry also suffered from a number of weaknesses which will be described at length below.

1.3.6.1. Varied quality of accusations of child sexual abuse

The definition of child sexual abuse used in the Ryan Report and, indeed, the Irish Inquiry more generally is very broad. It is as follows: «The use of the child by a person for sexual arousal or sexual gratification of that person or another person» (CICSA 2009, Vol. 3, 7.109). In keeping with this definition, the allegations of child sexual abuse pertained to a wide spectrum of types of sexual abuse, including with respect to their seriousness. They included violent rape

at the serious end of the scale and voyeurism at the less serious end of the spectrum. An example of an allegation at the serious end of the scale is as follows: «One Brother kept watch while the other abused me …*(sexually)*… then they changed over. Every time it ended with a severe beating. When I told the priest in Confession, he called me a liar. I never spoke about it again» (CICSA 2009, Vol. 7.129). An example of an allegation of a less serious form of child sexual abuse is being stared at while swimming (CICSA 2009, Vol. 3, 13.44. and 13.49). The allegations were also mixed in regard to the amount of detail that the complainant gave. Some complainants gave very detailed accounts, others spoke minimally about the alleged abuse (CICSA 2009, Vol. 3, 7.109). Of concern, the allegations made to the Confidential Committee were de-identified and, as such, nobody can challenge the claims, including those who were the subject of an allegation and the institutions which they belonged to and, possibly, still belong to.

Of further and greater concern, the conclusions in the Ryan Report were based on testimonial evidence provided to the Confidential Committee that was not tested, e.g. by cross-examination and investigation of factual claims made, i.e. for the most part witness testimonies were simply accepted as true at face value. This is obviously problematic in the case of inconsistent or otherwise implausible claims and, unlike the John Jay Inquiry, the Ryan Report did not identify and discard implausible claims. But it is also problematic in respect of complaints that are not entirely implausible but unverifiable or merely open to doubt. For instance, 10 witnesses reported that the application of scabies cream by female staff was sexual abuse. 7 witnesses reported that the observation of naked female students waiting for a bath by female staff was child sexual abuse (CICSA 2009, Vol. 3, 9.80). However, there was a problem of scabies and the application of scabies cream to the breasts and genital area a necessary health procedure. Therefore, the claim of 10 students that following this procedure was in some cases child sexual abuse should have been tested rather than simply accepted at face value. We note, that the breasts and genitals are two areas that are often infested with scabies. Moreover, given the presence of a scabies outbreak it would seem prudent to observe naked children as they bath. If it is the case that these instances referred to ordinary procedure it is not our claim that the 17 witnesses necessarily engaged in wilful deceit in making their complaints. Afterall most children, and many adults, do not know much about scabies and the appropriate treatment and may feel uncomfortable with what is a legitimate application of medicinal treatment. On the other hand, it is possible that abusers took advantage of children in what was otherwise a routine and necessary exercise if it was the case that they were deriving sexual gratification from doing so. At any rate, here as elsewhere, there is a need for further scrutiny of complaints.

1.3.6.2. Finance

The industrial schools, that were the subject of the Ryan Inquiry, were owned and run by the religious orders who provided the buildings and property, and paid for their upkeep. The State provided the funding for the maintenance of

many, if not most, of the children (CICSA 2009, Vol. 4, 2.02). The *1908 Children Act* stated that the State (i.e. the central government) will provide for the maintenance and reception of offenders in reformatory and industrial schools. However, the State was not obliged to pay for children who were admitted because their parents or guardians were unable to look after them (CICSA 2009, Vol. 4, 2.04). Local authorities paid for children who were in excess of the certification limit and for children who were under the age of six (CICSA 2009, Vol. 4, 2.05). These provisions were altered in changes made in 1944 (CICSA 2009, Vol. 4, 2.06).

There is some debate concerning whether or not the money paid by the State was adequate to maintain even minimum standards. Religious orders claim that the funding they received to care for children was grossly inadequate and consequently children suffered neglect and deprivation because of inadequate funding. On the other hand, the Mazars Report, commissioned by the Ryan Inquiry and generally accepted by the Ryan Inquiry, contradicted these claims. However, the Mazar's Report has been widely criticised, notably in the submissions made by the Christian Brothers (Congregation of Christian Brothers 2006), the Sisters of Mercy (O'Rourke 2006), the Oblates of Mary Immaculate (O'Hoisin and MacGuire 2007), and the Rosminian Institute (2019). All of these submissions found significant errors in the Mazar's Inquiry, including calculation errors and misinformation. Moreover, the findings of the Mazar's report are inconsistent with another official government report. For instance, the Kennedy Report (1970) concluded in 1970 that the funding was, in their words, «totally inadequate» (31). The submission by the Christian Brothers (2006) draws the following conclusion:

> The Mazar's Report is a fundamentally flawed document as it is based on assumptions and assertions which are untrue, and uses a comparator which is not valid. To compound matters, it ignores evidence from well-known and reliable sources which contradicts its findings. It follows, therefore, that its findings and conclusions are invalid and untenable (28).

In closing this discussion on the inadequate standard of the schools, it is worth noting that the Department of Education oversaw the running of the reformatory and industrial school system and Marlborough House Detention Centre. It was the responsibility of the Department of Health to ensure that all regulations were observed and that reasonable standards of living were maintained. This was supposedly achieved by routine inspections of the schools (CICSA 2009, Vol. 4, 1.01).

1.3.6.3. Commentary on the Ryan Report

As stated above, the Ryan Report was concerned with child abuse in general (and not merely child sexual abuse) across a wide range of institutions (and not simply those run by the Catholic Church). The Ryan Report found evidence (in the form of complaints) of widespread child sexual abuse and, in some in-

stitutions, the abuse was extremely serious. However, its statistics demonstrate that child sexual abuse in the ranks of the Catholic Church was essentially an historical problem. Moreover, it has been argued that the State did not provide adequate funding to the schools which contributed substantially to the neglect of children. Further, as we will see below in section 1.7. the Church's response to child sexual abuse developed in line with the broader community. Indeed, in some cases the Church was ahead of the broader community as far as child-safety measures are concerned. For instance, in 2000 the Church contacted the An Garda Síochána in an attempt to introduce police screening for candidates for the priesthood. However, the Church was advised it was not eligible to receive police screening for its clerical candidates (DACI 2009, 154).

Finally, it could be argued that the media coverage of the Ryan Inquiry focused squarely on deficiencies in the Catholic Church without commenting on the roles of state-based institutions. For instance, it is under-reported in the media that the Health Department were ultimately responsible for monitoring the residential schools that were run by religious organisations.

1.4. The Ferns Inquiry

As mentioned earlier, we do not offer an analysis of The Ferns Inquiry, given the overlap with the Murphy Inquiry and given the Murphy Inquiry was the larger inquiry. However, for the sake of completeness we offer this brief outline of the Ferns Inquiry and address some of the issues not well-covered in the Murphy Inquiry.

The Ferns Inquiry began in 2003. There were four phases in the inquiry. The first phase was an analysis of George Birmingham's report to establish the parameters of the Inquiry. The second phase was a research phase that concentrated on three research topics: (1) Child sexual abuse; (2) Paedophilia/Ephebophilia; and (3) Governance in the Church, the Health Board and An Garda Slochana. The third phase investigated events that occurred in the Diocese of Ferns. The fourth phase consisted of the writing up the report (The Ferns Inquiry 2005, 3-5). As mentioned above, we discuss salient findings from the Ferns Inquiry in other sections of this book, as appropriate. Here we make only a few brief points regarding the findings concerning the Diocese of Ferns.

The Ferns Inquiry examined the handling of allegations of historical child sexual abuse in the Diocese of Ferns. Unlike the Ryan Report, the Ferns Inquiry was only interested in child sexual abuse and not child abuse in general. 21 priests were accused of a total of 100 offences. Of these 21 priests, six were dead at the time the allegations against them were made, and a further three died after the allegations had been made. The allegations consisted of both substantiated and unsubstantiated ones. Two priests pleaded guilty to some of the allegations made against them. However, most of the priests who were the subject of an allegation strongly denied the allegations. Those priests who were dead at the time that the allegations were made were obviously not in a position to contest, let alone refute, the allegations. As was the case with the other inquiries constitut-

ing the Irish Inquiry, most of the allegations detailed in the Ferns Inquiry were not reported to the Diocese of Ferns prior to 1990, i.e. the allegations were made many years, indeed often decades, after the act of child sexual abuse was alleged to have occurred (The Ferns Inquiry 2005, 70).

Moreover, notwithstanding the fact that legislators, government bodies, and health professionals were seemingly unaware of the pervasiveness and dangers of child sexual abuse (please see section 1.2.) the commissioners undertaking the Ferns Inquiry did not believe this provided the Catholic Church with an excuse for its poor handling of allegations of historical acts of child sexual abuse. They argued that the Catholic Church should have been better informed than the broader community regarding child sexual abuse. One reason offered was the existence of evidence that the Church in the medieval world considered child sexual abuse to be one of the most serious offences (The Ferns Inquiry 2005, 13). This argument is not compelling; presumably the members of the community also believed child sexual abuse to be a serious offence. Therefore, it is one thing to believe it is a serious offence and quite another to know whether or not it is happening on a significant scale. Note, most of the allegations were made decades after the alleged events occurred. Therefore, in many cases the Church had no knowledge that the alleged crimes had even occurred at the time of the alleged offences. Moreover, this is still often the case given that it is very difficult to prove the veracity of claims of historical child sexual abuse.

That said, in spite of the Commission's concerns regarding the perceived early failings of the Diocese, the inquiry said it was satisfied that the Diocese operated at a 'very high level' of child protection at the time the report was written. The inquiry acknowledged that the Church had already addressed, in the years before the inquiry and whilst the inquiry was underway, many failings that were identified in historical cases of child sexual abuse. For example, the inquiry stated that processes relating to the selection and training of priests had undergone considerable positive change (The Ferns Inquiry 2005, 35).

1.4.1. The Framework Document

The most salient feature of the Ferns Inquiry concerned the inquiry's endorsement of the Framework Document. The Framework Document was a national Church document which set out guidelines regarding allegations or suspicions of child sexual abuse. It was created in 1994 by an Advisory Committee of the Irish Catholics Bishop's Conference in response to complaints by bishops that: (1) the processes of canon law regarding child sexual abuse were confusing and; (2) that some bishops found it difficult to create diocesan level responses to child sexual abuse complaints. We note here that under canon law a diocesan bishop has full judicial power in a diocese (The Ferns Inquiry 2005, 40).

The Ferns Inquiry was concerned that the processes of canon law were problematic; especially given that each bishop had to create his own approach to the handling of child sexual abuse cases on the basis of his interpretation of canon law. Moreover, the inquiry claimed that canon law is particularly deficient in re-

lation to priests who are the subject of an allegation of abuse but who deny the allegation and against whom no criminal conviction is secured. The Ferns Inquiry was more favourably disposed to the processes outlined in the Framework Document. For instance, «The Commission acknowledges that the standards which were adopted by the Church are high standards which, if fully implemented, would afford proper protection to children. The standards set by the State are less precise and more difficult to implement» (DACI 2011, 4).

The Ferns Inquiry claimed that the Framework Document (1996) provided the bishops in Ireland with a workable and uniform system for handling allegations of child sexual abuse. However, the Commission argued that there was still room for improvement in respect of the application of the guidelines set forth in the Framework Document. It was argued that the success of the implementation of the processes set forth in the guidelines in the Framework Document was still a matter for individual bishops, and as such, the application of the guidelines was very different from diocese to diocese.

To combat this problem the Ferns Inquiry Commissioners recommended that bishops consult the Inter-agency Review Committee, if one existed in their diocese, when making future decisions (The Ferns Inquiry 2005, 36). The Inter-Agency Review was created and instigated by Bishop Eamonn Walsh to address deficiencies in the Framework Document. The primary purpose of this committee was to assist bishops and diocesan leaders in communicating with and informing State authorities regarding the status of clerics who are the subject of an allegation of child sexual abuse or who are otherwise suspected of child sexual abuse. The Committee includes representatives of the Garda Sfochana and the Health Services Executive and holds regular meetings with the Bishop and/or the Diocesan Delegate to review these cases (The Ferns Inquiry 2005, 44). The Framework document is discussed at great length in section 1.6.1. in the commentary on the Cloyne Report.

1.5. The Dublin Archdiocese Commission of Investigation (the Murphy Report)

The *Dublin Archdiocese Commission of Investigation* report (commonly called the Murphy Report or the Dublin Report) inquired into, what it presented as, a representative sample of cases concerning the handling of allegations and suspicions of child sexual abuse against priests working in the Archdiocese of Dublin from 1975-2004. The remit of the Commission was to select a representative sample of allegations of child sexual abuse made to the Archdiocese of Dublin and examine how the Diocese handled these allegations. Some of the allegations came to the attention of the Diocese of Dublin after the implementation of the Framework Document and the Ferns Inquiry. Therefore, the Commission was interested in determining whether or not the Diocese was handling complaints in accordance with the processes outlined in the Framework Document and in accordance with the recommendations of the Ferns Inquiry.

As was the case with the Ferns Inquiry, the Murphy Inquiry differed from the Ryan Inquiry. The Ryan Inquiry concerned child abuse in general (includ-

ing but not restricted to child sexual abuse) in residential institutions, including industrial schools, run by various religious orders and congregations. Furthermore, the Ryan Inquiry received thousands of allegations of abuse and, among these, hundreds of allegations of sexual abuse. By contrast, the Murphy Inquiry focused solely on child sexual abuse and chose to examine only a representative sample of the available allegations of child sexual abuse and allegations of suspicions of child sexual abuse (DACI 2009, 1-2). An example of a suspicion of child sexual abuse is as follows: parishioners complained that a priest was alone with an altar boy in the sacristy, but, when asked, the altar boy said that he had not been abused. In total there were allegations of child sexual abuse against 172 named priests and 11 unnamed priests. 102 priests were within the remit of the investigation of the Murphy Inquiry (DACI 2009, 2). 46 priests were chosen for the representative sample. Most of the complaints related to boys – the ratio is 2.3 boys to 1 girl (DACI 2009, 3).

1.5.1. A representative sample of allegations?

As stated above, the Commission received allegations or reports of suspicions of child sexual abuse concerning 172 identified priests, and 11 un-identified priests who might or might not have already been included in the 172 number. It was decided that the actions of 102 of these priests fell within the remit of the Commission. However, the Commission decided that it could not examine all of these cases in the allotted timeframe and thereby set about choosing a representative sample of cases selected from the 102 priests. A so-called representative sample was created that covered the timeframe (1975-2004). It included a sample of single and multiple abusers, and cases that involved interaction between the Church and state authorities as well as those that did not, e.g. the order that dealt with complaints against Fr Boland organised treatment for the priest, co-operated with the Gardaí, but did not inform the Archdiocese of the complaints against Fr Boland or of the fact that he was convicted of child sexual abuse (section 1.5.4.3.).

A further consideration in determining the representative sample was the amount of information that was available to the Commission about particular cases. On the basis of this consideration the Commission decided to include all of the cases which led to a priest being convicted in a criminal court (DACI 2009, 171-72). Teresa Brannick, a statistician from the University College of Dublin, was commissioned to create a representative sample from the 102 priests. She compiled a list of 47 priests. The Commission reduced this number to 46 as one of the priests was later found not to be within the Commission's terms of reference (DACI 2009, 172). However, a selection of nearly half of the priests, including all of the cases of priests who were charged in the criminal courts – or in other words all of the cases at the very serious end of the scale – self-evidently does not constitute a representative sample, at least if one is seeking to represent the ratio of serious to less serious offences. In this respect the process was flawed and its conclusions with respect to the likely incidence of serious forms of child sexual abuse open to doubt.

Of the 46 priests in the representative sample, 15 were dead, a further 20 were out of ministry – of whom nine had been laicised (DACI 2009, 173). 11 of the 46 priests pleaded guilty to child sexual abuse or were convicted of child sexual abuse in the criminal courts. One priest was the victim of a verified false claim, another priest is highly likely to be the victim of a false allegation, and two priests were victims of mistaken identity, i.e. four of the 46 were either known to be or, were highly likely to have been, falsely accused. Moreover, in addition to these four cases there were other cases in which the testimony of witnesses was compromised or otherwise unreliable. For instance, in the case of Fr Phineas one of the complainants was found to have pressured another complainant to lie that she witnessed the first complainant's alleged sexual abuse (DACI 2009, 213). An additional two priests, among the 46, were suspected of child sexual abuse but no allegation of child sexual abuse was made. For instance, as mentioned above, an adult complained that she witnessed a child come out of the vestry with a priest and the child looked distressed, but the child rejected the allegation that he was abused when asked. According to the Commission's assessment approximately half of these allegations of child sexual abuse were handled well by the relevant religious organization[1]. Furthermore, as mentioned above, this so-called representative sample contained 11 cases at the more serious end of the scale, i.e. cases involving criminal trials. There are two cases missing, presumably for legal reasons.

1.5.2. Church performance regarding allegations of child sexual abuse.

As stated above, half of the representative samples were handled well by the Church according to the Commission's assessment. In the other half of the cases the Commission found that the Church performed poorly or there was a mixed response, i.e. some members of the Church dealt well with a case whilst others did not. Please see the example cases in section '1.5.4. Sample Assessments'. As a consequence of these poor performances children were sexually abused and they and their families harmed.

However, in some cases the criticism of bishops, in particular, is too forceful. For example, according to the summary of the inquiry all four archbishops and many auxiliary bishops (covering the period of the inquiry, 1975-2004) performed poorly. The main criticism the commission had of the archbishops was that none of them reported their, what the commission is calling, «knowledge of child sexual abuse» to the police in the 70s and 80s (DACI 2009, 10). However, the 'knowledge' in all but one case concerned unsubstantiated allegations of child sexual abuse. As far as the case-studies in this inquiry are concerned, it

[1] Please see the following assessments: Fr Phineas (211); Fr Clemens (481); Fr Kinsella (546); Fr McCarthy; (574); Fr Dante (589); Fr Cassius (591); Fr Giraldus (case of mistaken identity) (596-597); Fr Aquila (600); Fr Jacobus (probable false allegation) (616); Fr Guido (620); Fr Rufus (625); Fr Ignatio (probable case of mistaken identity) (628); Fr Cornelius (630); Fr Ricardus (proven case of false accusation) (634); and Fr Enzio (637).

is not the case that bishops knew that certain priests were sex-offenders and yet failed to report these priests to the police. Rather the priests in question were the subject of unsubstantiated allegations of child sexual abuse and were moved to different dioceses. It must also be kept in mind that in the 70s and 80s clerics were not mandatory reporters of child sexual abuse. That said, the bishops and archbishops in this report did have a moral responsibility to ensure that children were protected and that justice was served. Therefore, they should have reported allegations of child sexual abuse to the police.

However, cases of negligence/incompetence are complex. For instance, in some cases alleged offenders denied allegations against them and there was insufficient evidence to settle the matter one way or the other. In still other cases, there was confusion regarding the correct procedure in relation to allegations of child sexual abuse, e.g. should the Church inform the schools if there is an allegation of child sexual abuse or should the Health Department do so. Moreover, there was also confusion concerning restricted ministry – that is, banning priests from practicing in certain settings such as parishes where they are likely to come into contact with children. For instance, and regarding the confusion, the Church undoubtedly, albeit often unknowingly, exposed many elderly patients in residential homes to risk when child sexual abusers were placed on restricted ministry in aged-care facilities. In these instances, it was generally believed that a priest who had sexually abused a child would not sexually abuse an adult. However, this is not necessarily the case. Indeed, there is evidence to suggest that some sexual offenders do not have an age preference and will abuse both children and the elderly (Lea et al. 2010, 13).

Another significant area of confusion concerned the practice of monitoring priests who were the subject of an allegation of child sexual abuse and priests who were known to be sexual offenders. Such priests are monitored by the Church. These priests often end up living in monasteries or in residential homes where they are put on restricted ministry and can be watched closely. For instance, a priest may not be allowed to leave a monastery. In many cases this practice was supported by the police and the Health Department. However, in reality the Church was often unable to perform this monitoring task adequately. That said, many of these suspected sex-offenders, including ones who could not be convicted in a court of law due to a lack of evidence, and who, therefore, could not be imprisoned, were monitored more closely than sex-offenders who were not clerics and, therefore, were living outside Church institutions in the wider community. In short, a policy of de-frocking suspected sex-offenders and casting them out of the Church might well have worse consequences than retaining and monitoring them. The Commission acknowledged the difficulties of monitoring priests on a full-time basis. Thus: «The Commission has already noted in its Report into the Catholic Archdiocese of Dublin that monitoring of sex abusers is very difficult and that there is greater monitoring of clerical child sex abusers than any other child sex abusers» (DACI 2009, 17).

The Church in Ireland generally performed better after the implementation of the Framework Document in 1996.

1.5.3. The Framework Document

As stated previously, the Framework Document is a national document which sets out guidelines to follow in response to allegations or suspicion of child sexual abuse. Problems with the Framework Document were discussed in the Ferns, Murphy and Cloyne reports (The Ferns Inquiry 2005, 40).

The Commission claims that the implementation of the Framework Document did improve the way that allegations of child sexual abuse and, more generally, cases of suspected child sexual abuse were handled. Yet, it also criticized the significant delay in the implementation of the guidelines. For instance, in the case of Marie Collin's complaint it was not until 11 months after the implementation of the Framework Document that she received her entitlements (DACI 2009, 207). Notwithstanding this, the Commission reports that it is confident that allegations of child sexual abuse cases or suspected child sexual abuse, more generally, are currently being handled well by the Diocese of Dublin. Consider the following quote from the Commission.

> The Commission is satisfied that there are effective structures and procedures currently in operation. In particular, the Commission is satisfied that all complaints of clerical child sexual abuse made to the Archdiocese and other Church authorities are now reported to the Gardaí. There is no legal requirement for such reporting but the Commission considers that the Gardaí are the appropriate people to deal with complaints (DACI 2009, 4).

Since the implementation of the Framework Document the Catholic Church in Ireland has, for the most part, recorded allegations of child sexual abuse and other instances of suspected child sexual abuse. Moreover, it has, for the most part, taken the appropriate steps by way of response to these allegations and suspicions (DACI 2009, 21). (The Diocese of Cloyne was evidently an exception to this). To put this in historical context, the Framework Document was implemented in 1996 and state implemented child–care legislation was also implemented in 1996 (DACI 2009, 25). The Commission endorsed the Framework Document and remarked, «Since the implementation of the Framework Document, the Archdiocese and other Church authorities report complaints of clerical child sexual abuse to the Gardaí –this is appropriate communication» (DACI 2009, 26). In 2006 the Health Department created a questionnaire which was sent to 23 bishops and 140 provincials of religious congregations. The purpose of this questionnaire was to assess Church compliance with the recommendations of the Ferns Inquiry (DACI 2011, 102). This investigation showed that, but for the Diocese of Cloyne, there were no cases of serious non-compliance with the recommendations of the Ferns Report (DACI 2011, 99).

1.5.4. Sample assessments

The following are a sample of assessments from the representative group that illustrate poorly handled cases, but also well-handled ones and ones that

were neither poorly nor well-handled. The priests in these samples were given pseudonyms by the Inquiry.

1.5.4.1. Cases that were handled well after the Framework Document was implemented

Fr Dante was the subject of four allegations of child sexual abuse. Three of the allegations concerned a trip to France where it is alleged that Fr Dante sat children on his knee, instructed the children not to wear underwear, to sleep naked and to leave the bathroom door open when showering so that he could check on them. Fr Dante told the boys that they would be smacked on the bare bottom if they did not do as he instructed. The fourth allegation concerns an allegation that Fr Dante placed a boy on his knee after the trip. Fr Dante retired from the priesthood due to poor health.

> The Commission's assessment:
> The complaints were dealt with by the Archdiocese appropriately and in accordance with the Framework Document. The Gardaí also dealt with them appropriately. There was good communications between the Archdiocese, the Gardaí and the health board. There was also good communication between the Archdiocese and the UK diocese. The advisory panel was particularly effective in ensuring that this communication occurred and was clearly very aware of the need not to rely on Fr Dante himself to communicate with relevant people. This case again raises the difficulty as to how the activities of priests accused of child sexual abuse are to be monitored. In this particular case, it appears that everything possible that could be done was done but the end result is that a priest about whom there are concerns is now living in an unsupervised regime (DACI 2009, 581-89).

Fr Francis McCarthy admitted to the police that he had sexually abused a boy in the 1970s. The complainant alleges that the abuse lasted for four years and included inappropriate touching, kissing, oral sex and attempted penal penetration – Fr McCarthy denies some aspects of the abuse. Fr McCarthy petitioned the Pope to allow him to be laicised and this was granted in November 2005.

> The Commission's assessment:
> This case provides a good example of a case which the Archdiocese, the health board, the Granada Institute, the Gardaí and the Department of Education handled the various complaints well. It must be acknowledged that the Dunlavin complainant went to the Gardaí rather than to the Church authorities in the first instance. The first complaint was made towards the end of 1995. This was the time when the Archdiocese had decided to refer all allegations to the Gardaí and the health board and the Framework Document procedures were being introduced (DACI 2009, 565-74).

1.5.4.2. A case that was handled poorly

Fr Patrick Maguire is a member of the Missionary Society of St Columban. He has been convicted of indecent assault in the UK and in Ireland and has

served prison sentences in both entities. He has admitted to having abused over 100 victims. His pattern of abuse suggests that there may be hundreds of victims in Ireland the UK and Japan. Fr Maguire was suspended from the clerical state in 2000. He remains a member of the Society and lives within the Society under strict conditions.

The Commission's assessment:

Complaints about Fr Maguire were handled very badly by his Society over a period of about 20 years. Specific complaints to the bishop of Raphoe in 1975, to a priest in the Archdiocese of Dublin in 1979 and to the Archbishop of Dublin in 1984 were also very badly handled. A number of complaints seem to have been largely ignored or avoided; in other cases, the response was to move him somewhere else. The Society knew at a relatively early stage – at least by 1974 – that there was a problem. The Society paid for extensive and expensive assessment and treatment for Fr Maguire between 1974 and 1996. However, for about 20 years, it did absolutely nothing to prevent his access to children. In a particularly disastrous move by the Society, he was assigned to go around Ireland promoting the Columbans. He did this by visiting schools and preaching at masses. This gave him access to every Catholic Church congregation and to every Catholic school in the country, in effect, to virtually every child in the country. He duly took advantage of that access. Several Church authorities in Ireland and the UK including the superiors of the Columbans and a number of bishops knew that he was an abuser but it was more than 20 years after the first complaint that appropriate action was taken to prevent his access to children. In recent years the Society has taken steps to ensure that he does not have access to children and is to be commended for supervising him and not expelling him from the Society. The Society told the Commission that it "fully accepts that very serious mistakes were made" in its dealings with Fr Maguire. The Commission accepts that the structure of the Society militated against or, at least, did not facilitate co-ordinated handling of the problem. However, it appears that the culture of confidentiality, the over-arching concern for the welfare of the priest and the avoidance of scandal were the major contributory factors to the quite disastrous way in which this case was handled.

Archbishop Ryan was negligent in his dealings with Fr Maguire. It is not clear who precisely was at fault for the failure to deal with the first complaint to the Archdiocese in 1979 but it was someone from the Archdiocese. Archbishop Ryan's stated reason, as contemporaneously reported to the Society by his secretary, for not following up complaints received in 1984, that is, Fr Maguire's delicate position as secretary to the Superior-General, is quite shocking. It appears that Archbishop Ryan got different people within his administration to deal with child sexual abuse complaints as they arose and, as a result, no one person knew the extent of the problem. Bishop McFeely of Raphoe did report the problem accurately but dealt with it by having Fr Maguire removed as quickly as possible. It is the Commission's view that the Society acted properly in seeking to laicise Fr Maguire while, at the same time, making it very clear that it intended

to retain, maintain and supervise him as a member of the Society. The decision of the Roman Rota tribunal to change the decision of the Dublin Metropolitan Tribunal from dismissal from the clerical state to nine years suspension was, to put it at its mildest, unhelpful. It left the Society in a position where his precise status was unclear. Prior to 1997, there was inadequate communication between the different parts of the Society. There was inadequate communication between the Society and the Archdiocese. The bishop of Raphoe, while he immediately removed the problem from his diocese, did clearly and unambiguously tell the Society what the problem was. However, through no fault of his, his letter was not made available to the relevant people in the Society who were supposed to be Fr Maguire's superiors (DACI 2009, 217-38).

1.5.4.3. A case with a mixed assessment

Fr John Boland is a member of the Capuchin Franciscan Order. He worked in the Archdiocese of Dublin as a teacher, school chaplain and hospital chaplain. He is now living in one of the order's houses in Ireland with restrictions on his activities and ministry. Fr Boland was convicted of nine counts of indecent assault in 2001 against one victim and he received a 12-month suspended sentence. He has admitted to abusing about 20 children.

The Commission's assessment:
The order's handling of the first complaint in 1989 was relatively good for its time. The priest was sent to a psychiatrist and counselling was provided to the complainant. This is one of the few cases of which the Commission is aware that counselling was provided for a complainant before the mid-1990s. This complainant was, of course, part of the order as well. After the second complaint was made, the order did its best to try to ensure that Fr Boland did not have access to children. It organised treatment for him and then supervised him well in spite of the difficulties he presented. It co-operated with the Gardaí when they became involved. The communication between the order and the Archdiocese was very poor in this case – in fact, it was virtually non-existent on the part of the order. The order did not inform the Archdiocese of the complaints against Fr Boland or of the fact that he was convicted. The order has told the Commission that it accepts that this "represents an unacceptable lapse and wishes to express its regret and concern that such a lapse was allowed to occur". Its current reporting policy, if maintained, means that such lapses should not occur in the future. The Commission considers that the order's current arrangements for dealing with alleged child sexual abusers are robust and are being implemented (DACI 2009, 482-93).

While the Church's record with respect to the handling of true allegations of child sexual abuse has received a great deal of attention it is important not to forget that there are cases of false allegations of child sexual abuse made against priests in addition to cases of presumed mistaken identity and suspicions of child sexual abuse where no allegation of child sexual abuse is made.

1.5.4.4. False claim

Fr Ricardus was falsely accused of sexual assault, buggery and attempted oral rape. The complainant admitted to making a false statement in the High Court of Ireland and was subsequently charged and received a custodial sentence. The complainant's parents also admitted to lying to the police. Fr Ricardus was stood down from ministry for 8 months. He is currently serving as a priest in Ireland and assists other priests who have been the subject of allegations of child sexual abuse.

> The Commission's assessment.
> The management of the complaint by the Archdiocese in this case, although understandably viewed by Fr Ricardus as harsh, was in compliance with the Church guidelines in place at the time. While recognising and appreciating the enormous hurt, anger and stress suffered by Fr Ricardus, the Commission considers that the Archdiocese was obliged to ask him to step aside from active ministry as soon as it became aware of the complaint. A hasty preliminary investigation by the Archdiocese into the complaint made prior to asking the priest to stand aside may well have led to further injustice being suffered by the priest concerned. Although Fr Ricardus did suffer considerably from the consequences of the false accusations, the Commission considers that the Archdiocese did act appropriately. The Archdiocese co-operated fully with the Gardaí in their investigation. The Gardaí managed their investigation in a professional, timely and efficient manner (DACI 2009, 643).

1.5.5. Areas of concern

The following commentary focuses on areas of concern in the complaints handling process in the Diocese of Dublin. However, these concerns are also, generally, relevant for the Church in Ireland, the USA and Australia.

1.5.5.1. Treatment

The Church was criticised in the Irish Inquiry, as it was in the John Jay and Australian inquiries for viewing child sexual abuse as a moral problem that could be addressed by the provision of moral guidance and advice to offenders by bishops and fellow priests (DACI 2009, 70). Child sexual abuse is indeed a very serious moral problem but not, of course, a problem that can be successfully addressed in all, or even most instances, merely by the provision of guidance and advice, moral or otherwise. Paedophiles, for instance, are engaged in immoral, indeed egregious, behaviour but in many cases, it is compulsive and, therefore, not able to be corrected merely by the provision of advice and guidance.

That said, it is often overlooked that the Church in the 60's-80's relied heavily on the advice of psychiatrists and psychologists regarding the potential for rehabilitation of priests who were known to be child sexual offenders. Of the

representative sample of offending priests in the Murphy Report (46 alleged offenders), 25 were assessed and/or treated by the Granada Institute treatment facility, and a further 8 attended the Stroud treatment facility. A smaller number of priests attended various other treatment centres. Only 7 of the 46 priests did not receive treatment (DACI 2009, 19)[2]. The Granada Institute maintained that there was no treatment that could be given to an offender that would guarantee that a particular offender would not re-offend. However, the Granada Institute did claim that the recidivism rate for offenders who received treatment at their institution was between 1% and 8% for low-risk offenders and up to 25% for high-risk offenders. This is in contrast to the risk of re-offending for offenders who were not treated. The Granada Institute put that number at between 15%-50%. The Granada Institute maintained that the priests who they deemed to be suitable for restricted ministry were at a low risk of re-offending. It was also their view that it was helpful in terms of the rehabilitation of the priest if he was to remain a priest (DACI 2009, 20).

The Commission did not challenge these figures on the grounds that it lacked expertise in the area (DACI 2009, 19). However, the Commission was critical of the Granada Institute's general recommendations. The Commission argued that most priests come into contact with children in pastoral work and it is very difficult to supervise priests at all times. This is certainly a valid concern. Moreover, there is some evidence that child sexual abuse perpetrated by a priest can have a more damaging impact on a victim than child sexual abuse perpetrated by a lay person. Yet, as the Commission recognised, there is no simple solution here. For the alternative may well be that the priest is defrocked and is no longer monitored at all by the Church. This could potentially be more dangerous for children (DACI 2009, 19-20).

The Commission's concerns regarding the processes of canon law are outlined below.

1.5.5.2. Canon law

For much of the period covered in this inquiry, the procedure for handling complaints of child sexual abuse in the Catholic Church in accordance with canon law was as follows. A preliminary investigation was conducted by the Diocese whenever a complaint of child sexual abuse was received. Given that there was a 'semblance of truth' to the allegation, the bishop sent a report to the Congregation for the Doctrine of the Faith (CDF) in Rome, and requested advice as to how a case should be handled consistent with canon law. Importantly, only a judgement by a canonical process can have a priest defrocked (DACI 2009, 57). According to the Murphy Report the procedure of sending a report to the CDF has been a mandatory requirement in canon law since 1917. However, this requirement was often ignored by bishops who received allegations of child sex-

[2] Note this figure does not include the 5 priests who had died before allegations were made.

ual abuse. These bishops remarked that prior to 2001 they were unaware of the requirement (DACI 2009, 53). Certainly, this requirement was clearly stated in 2001 in the letter, *Sacramentorum Sanctitatis Tutela* (The Ferns Inquiry, 45). However, the chancellor, Monsignor Dolan, gave evidence that the 2001 policy was subsequently modified as Rome was unable to deal with the vast numbers of referrals. The position in 2001, he said, was that all cases brought to the attention of the Archdiocese before April 2001, and which were outside the statute of limitations, were not required by canon law to be assessed by the CDF, and therefore, were not going to be dealt with by the CDF (DACI 2009, 67).

This criticism of the CDF requires a brief comment. The administrative difficulties that have arisen for the Catholic Church as a result of delayed reports are not widely known. Moreover, it is worth noting that the central unit for investigating allegations of child sexual abuse in the Vatican, the CDF, was overwhelmed by the large number of allegations that came within a short period of time. This has otherwise been described of as, a «tsunami of allegations». The CDF maintain that they had a small staff assigned to handle complaints of child sexual abuse as they did not receive many allegations of child sexual abuse prior to inquiries into child sexual abuse. Therefore, when the 'tsunami' of allegations was forwarded onto the CDF they were overwhelmed and unable to handle them all appropriately.

1.5.5.3. Imputability

An additional concern for the Murphy Inquiry was the area of 'imputability'. Canon 1321 states that a person cannot be punished for an offence unless it is imputed or driven by malice or culpability. A difficulty arises here from the fact that paedophilia may be interpreted as a condition involving diminished imputability, given that paedophiles are often subject to urges beyond their control (DACI 2009, 19). As the Murphy Report stresses, there is a considerable difference between the state law and canon law on this matter. According to the above interpretation of canon law paedophilia may be considered a disorder. Therefore, paedophiles may be considered to have diminished responsibility for their offences, diminished responsibility being a mitigating feature (DACI 2009, 71-2). If so, potentially, paedophiles might not be able to be punished under canon law, or might only be able to receive a weak punishment. In contrast, paedophiles are ascribed full responsibility for their actions in the criminal justice system.

However, it is also worth noting that church law works in concert, or is designed to work in concert, with state law. Therefore, it must be stressed that the Church's stance on imputability in cases of paedophilia does not mean that the priest should not be subject to criminal law if the priest has broken the law, as would be the case with paedophile offences. Nor does it follow from this that a paedophile priest should have unrestricted ministry. However, it is to say that the Church has a responsibility to ensure that priests are not laicized lightly.

Yet, this is a double-edged sword for the Church. If the Church retains priests who have been the subject of allegations of child sexual abuse there is a good chance

that these same priests will need to be monitored. Indeed, the Commission has praised the Church on this front. However, the Church is open to criticism here also. For instance, as the Commission has argued, offenders can use their status as a priest to gain confidence with parents and get close to children (DACI 2009, 79). On the other hand, it would seem that child sexual abusers find ways to get closer to children, be they priests or otherwise. Moreover, if the priest is defrocked, he will not be monitored by the Church, likely making him a greater risk to society than a priest whose activity is being monitored. Of course, it is also true that the Church failed many times to monitor priest abusers adequately.

1.5.5.4. Bias in the practice of canon law

It has often been argued that there is a bias in the practice of canon law in favour of priests. For instance, it has been argued that lay offenders in the Church were more likely to be reported to the police than clerical offenders. Moreover, it has been argued that priests are more likely to be protected than victims are to receive justice. A further area of concern regards the lack of disciplinary action against bishops. For instance,

> Canon 1389 provides for a penalty, including deprivation of office, for an official who abuses ecclesiastical power or who omits through "culpable negligence" to perform an act of ecclesiastical governance. A bishop who fails to impose the provisions available to him in canon law in a case of sexual abuse of a child is liable to penal sanctions imposed by Rome. The Commission is not aware of any bishop who was subjected to such penalty in the period covered by its remit (DACI 2009, 76).

1.5.5.5. Lack of clarity in procedures

The Commission claimed that the procedures in canon law for dealing with allegations of child sexual abuse were unclear and burdensome to bishops, or that the appropriate measures for handling allegations of child sexual abuse were not made clear to bishops. For instance,

> The Commission was surprised to discover that the 1962 instrument referred to above and its predecessor in 1922 were circulated under terms of secrecy, were kept in a secret archive and, in the case of the latter, apparently never translated from the original Latin. Even more astonishing, Monsignor Stenson, a former chancellor and long-term advisor to successive Archbishops did not see the 1922 document until the end of his time in Archbishop's House. There was no evidence that Archbishops Ryan or McNamara ever applied that document or even read it and the most recent former Archbishop, Cardinal Connell, told the Commission that he did not become aware of the 1922 instruction for some time after becoming Archbishop and that he had never read or seen the 1962 document or met anyone who had seen it (DACI 2009, 79).

A further criticism of Church handling of complaints regarding child sexual abuse concerns a lack of restorative justice for victims of child sexual abuse. For instance, canon law has provisions for providing justice to victims of child sexual abuse including compensation payments. However, it is the view of the Commission that historically the Church did not use canon law to provide justice to victims of abuse (DACI 2009, 57-8).

1.5.6. Commentary on the Murphy Report

The Commission rejected the Archdiocese of Dublin's claim, regarding the handling of allegations of child sexual abuse, that it was 'on a learning curve' prior to the late 90's. Indeed, in the report the Commission argues that the Archdiocese wilfully mishandled allegations of child sexual abuse and that the reason for this was that the Diocese was preoccupied with the good reputation of the Church and the preservation of its assets. The Commission claimed that the Archdiocese did not act according to canon law and that it failed to report instances of child sexual abuse to state authorities (DACI 2009, 3-4). However, this criticism is open to the objection that most of the complaints were made to the Church after 1995 (the alleged acts of child sexual abuse allegedly took place, for the most part, decades earlier) and that the Commission accepted that this was the case (DACI 2009, 4). Moreover, the main criticism of Church authorities with respect to failure to report instances of child sexual abuse is that the Archdiocese was not sufficiently responsive to what were in fact, in many cases, rumours and anonymous complaints (DACI 2009, 8). Certainly, the Church did not report such complaints to the police, and did not adequately investigate such complaints and, more generally, was insufficiently proactive in conducting investigations into priests with respect to whom suspicions of child sexual abuse had been raised. However, even in these latter cases there was no hard evidence of this abuse and, in most, hard evidence would have been very difficult to come by given their historical nature.

1.6. The Cloyne Report

At the end of the Commission of Inquiry into the Dublin Archdiocese in 2009 the government asked the inquiry to extend the remit of the inquiry to investigate the Diocese of Cloyne. This report differed from the other inquiries in that it solely assessed complaint handling post 1996 i.e. 1996-2009 – after policies for addressing child sexual abuse were put in place. It was the Church's own safeguarding watchdog that first raised concerns regarding complaints handling in the Diocese of Cloyne.

Unlike the Dublin Inquiry, the Commission examined all allegations and suspicions of child sexual abuse regarding clerics of the Cloyne Diocese that were within the general remit of the inquiry and not merely a representative sample of them. In total there were 19 clerics within the remit of the inquiry who were the subject of allegations of child sexual abuse or who were otherwise suspected

of child sexual abuse. This number includes one unnamed cleric. It is claimed that 12 clerics listed in the Diocese of Cloyne Diocesan Directory for 1996 were the subject of allegations of child sexual abuse or were otherwise suspected of child sexual abuse (DACI 2011, 2).

The inquiry was concerned with allegations of historical acts of child sexual abuse. The oldest allegation concerned an alleged event that occurred in the 1930s. Regarding the clerics, four were dead when the first complaint against them was made. Six clerics were retired or about to retire when complaints were first made against them (DACI 2011, 3). At the time the report was written eight of the clerics were dead, three were retired, two were not in ministry, and two were in ministry in the Diocese (DACI 2011, 4). It is claimed that the Diocese of Cloyne failed to respond to these allegations adequately, on the grounds that only some of these allegations were passed on to the Gardai and civil authorities and only some of the allegations were investigated adequately by the Church (DACI 2011, 3). It is important to note that the objective of the inquiry was to assess how the Diocese of Cloyne handled complaints of child sexual abuse according to the standards set out in the Framework Document.

1.6.1. The Framework Document and the Diocese of Clyone

Regarding the Cloyne Inquiry, the Commission claimed that the Bishops' Conference agreed in 1996 that policies outlined in the document, which is generally known as, the Framework Document (*Child Sexual Abuse: Framework for a Church Response*), would be implemented in Ireland. However, the Commission argued that the guidelines set out in the Framework Document were not fully or consistently implemented in the Diocese of Cloyne in the period 1996 to 2009 (DACI 2011, 5). For instance, the Commission argued that the Diocese of Cloyne did not do the following in accordance with the Framework Document: report all complaints to the Gardai; report all complaints to the health authorities; appoint support people for victims of child sexual abuse; and operate an independent advisory panel (DACI 2011, 6). These concerns are further discussed below. However, before doing so, it is important to note that the Framework Document was considered by the Vatican to be a 'study document' given that the document was, in some respects, incompatible with canon law. Furthermore, the document was, in some respects, unmanageable. For example, the document required that *all* cases of child sexual abuse be reported to the Health Department. However, the primary role of the Health Department, in this regard, is to create a risk assessment. Therefore, reporting dead priests to the Health Department was and is unnecessary, as a dead person is obviously not a risk to children (or anyone else for that matter).

1.6.2. Police

The Commission was most concerned with the Archdiocese's failure to report all allegations to the Gardai (the police). By the estimation of the Commission

there were 15 allegations that should have been reported to the Gardai. However, the Archdiocese only reported 6. Regarding reporting dead priests to the police, the Commission had the following to say:

> Prior to 2009 the diocese did not report complaints against deceased priests to the Gardaí or the HSE. Monsignor O'Callaghan told the Commission that the practice of notifying the Gardaí of complaints involving deceased priests did not exist until May 2003. The Framework Document requires that all complaints be reported to the Gardaí – it does not specify different arrangements for deceased priests. In any event, Monsignor O'Callaghan, having been informed about best practice, still did not report to the Gardaí or the HSE in cases involving deceased priests after 2003. The Commission considers that reporting in relation to deceased priests is important for a number of reasons but mainly because it may help to validate other complainants (DACI 2011, 7).

We note that there was some confusion concerning whether or not to report dead priests to the police and the Health Department. 4 of the 9 cases that the Commission claimed should have been reported to the police involved dead priests. Diocesan leaders, generally, did not believe it was necessary to report dead priests who were the subject of allegations of child sexual abuse to the police. However, and as is evident in the quote above, the Commission argues that allegations against dead priests should be reported to the police for evidential reasons. This would seem to be the right course of action as it provides some evidence for victims of child sexual abuse who are seeking compensation.

Of the remaining 5 cases, 2 cases involved alleged victims who were minors at the time the allegations were made (DACI 2011, 6-7). It is worth noting that there were diverse views in the Church regarding mandatory reporting of claims of child sexual abuse, be they historical or contemporary claims. In some cases, the alleged victim did not want to report the abuse to the police, in historical cases it was often the case that the priest concerned was dead or infirm, and in contemporary cases some clerics viewed reporting the abuse to the police to be the responsibility of the person making the complaint. Take for example this comment from Monsignor O'Callaghan's in a letter addressed to a canon lawyer in 2002:

> On the issue of reporting to civil authorities I have always been of your mind and endorse everything you say. I am convinced that reporting should have been left to the complainants. Our role in the whole process has been compromised by taking on direct reporting as part of our remit. Why should we take it on ourselves to report when the complainant does not want it done? This commitment on our part also seriously compromises our relationship with the priest against whom allegations have been made (DACI 2011, 7).

The Commission is right to remark that Monsignor O'Callaghan 'missed the point' that reporting cases of child sexual abuse protects children from future harm.

A related point concerns the somewhat cumbersome process for making allegations about child sexual abuse, which is not the fault of the Church. For

example, if the Church or the Health Department refer an allegation to the Gardai, the Gardai will not contact the complainant directly but contact the referring party and tell the referring party that it can contact the complainant and inform the complainant that the Gardai will carry out an investigation if the complainant wishes them to. A further complication arose because, at the time of this inquiry, and in cases of historical allegations, the complainant had to provide a reason why there was a delay in reporting the crime. In some instances, the Gardai then had to inform the complainant that, because of the delay, there would potentially be an appeal for a judicial review. In cases of delayed reporting, the accused was permitted to appeal for a judicial review if the delay in reporting significantly compromised the ability of the accused to gather exculpatory evidence (DACI 2011, 79).

1.6.3. Health Department

The Commission argued that the Church failed to follow the Framework Document because it did not report all allegations to the Health Department and the Gardai. The Commission argued that there were clear guidelines in the Framework Document regarding this (DACI 2011, 45). Notably, the Framework Document includes the following guideline: «2.2.1 In all instances where it is known or suspected that a child has been, or is being, sexually abused by a priest or religious the matter should be reported to the civil authorities. Where the suspicion or knowledge results from the complaint of an adult of abuse during his or her childhood, this should also be reported to the civil authorities» (DACI 2011, 48).

Regarding reporting to the Health Department, the Commission had the following to say:

> In 1996, Monsignor O'Callaghan did report complaints against one priest to the health board. After that, no complaint was reported to the health authorities until 2008. The requirement to report to the health authorities was one which the Church imposed on itself and which the Diocese of Cloyne ought to have implemented in respect of all complaints whether historical or not and whether or not the Church had any confidence that the health authorities would do anything about these complaints (DACI 2011, 8).

However, according to the Health Department it was not necessary for the Diocese to report allegations against dead priests to the Health Department. On this point, it is important to note that most of these allegations concern allegations of historical acts of child sexual abuse. The Health Department considers that its role as far as historical allegations are concerned is minimal. The reason for this is that the primary role of state-run Child Protection services is to perform a risk assessment. As I have mentioned previously, no child is at risk of a dead priest. Therefore, there is no need for a risk assessment in these cases. In terms of retired priests there may be minimal need for risk assessment, especially if the priest is infirm (DACI 2011, 91).

Furthermore, the Health Department was unsure of its own role regarding the handling of child sexual abuse complaints and, thereby, was not entirely helpful to the Church. For example, the Commission had otherwise stated in the Dublin Report that the Health Department had a limited role as far as extra-familiar abuse is concerned (DACI 2011, 88). «It is clear from this statement that the HSE considered that the onus of risk management of priests against whom allegations were made rests on the Diocese and not on the health services. It is to the credit of the Diocese that it did engage in risk assessment in 2009. The Diocese could not have been compelled by the State to do this» (DACI 2011, 92).

Regardless of all of this, the Commission argued that the Church had procedures in place that required all complaints of child sexual abuse to be reported to the Health Department and it should have followed through with this regardless of whether or not the priest in question was dead or if the Health Department deemed it to be unnecessary to do so.

> Monsignor O'Callaghan said that he had been told by this health board official that it was pointless reporting to the health board in cases where the alleged perpetrator was dead or in situations where a risk to children was not a current concern: "Outside of that their writ did not run. When it came to providing counselling for adult complainants, they had very limited resources". Whatever the role of the HSE and its power or capacity to deal effectively with notifications of alleged child sexual abuse, the fact remains that the Church guidelines which the Diocese of Cloyne had adopted required that notification of complaints be made (DACI 2011, 92-3).

In summation the Commission had the following to say regarding the Church's inability to follow the Framework Document to the letter: «Unlike the State guidelines, reporting of complaints made by adults to the health authorities as well as the Gardaí was required in all cases involving priests working in dioceses as they would have had unsupervised access to children at some stage of their careers. The circumstances in which a child protection issue in cases of complaints by adults is considered to arise are clear in the Church guidelines whereas this is, unfortunately, not always the case in the State guidelines» (DACI 2011, 49).

Clearly, the Framework Document was deficient, in some regards, which leads into the commentary in the next section.

1.6.4. Study document?

As noted earlier the Framework Document was considered by the Vatican to be a study document. We have previously mentioned the concern that the Framework Document was, at least in some respects, inconsistent with canon law. A further concern with the Framework Document was that it did not offer the complainant the option of confidentiality. It is noted that some people want to make confidential complaints regarding child sexual abuse. The Commission argued that this is irrelevant and remarked that regardless of the complainant's wishes the policy did not allow for the possibility of confidential complaints. Hence the Commission

stated: «It was recognised that some people come forward, not primarily to report their own abuse, but to warn Church authorities of a priest or religious who is a risk to children. Nevertheless, the policy is clear that undertakings of absolute confidentiality should not be given and the information should be received on the basis that only those who need to know would be told» (DACI 2011, 49).

The overarching question in this section concerns whether or not Bishop John Magee, the bishop of Cloyne 1987-2010, and hence bishop for the entire remit of the inquiry, viewed the document as a study document or not. The Commission argued that Bishop Magee did not view the document as a study document. Indeed, the Commission claimed that Bishop Magee wrote to all of the priests in the Diocese of Cloyne (5 in total) to advise them of this. However, it is worth noting that the actual quote from Bishop Magee which the Commission uses to support this premise does not state that all of the procedures needed to be adhered to strictly. The quote is as follows: «It is hoped that the enclosed report will serve the purpose of assisting Diocesan and Religious authorities in dealing appropriately with allegations of child sexual abuse which involve Priests or Religious» (DACI 2011, 4-5). Indeed, the wording 'purpose of assisting' would suggest that Bishop Magee viewed this document as a flexible document or a study document, in keeping with the Vatican. In 1996 Bishop Magee told the Commission that he sent a copy of the Framework Document to all priests in the Diocese of Cloyne with a covering letter claiming the Framework Document was intended as a guide for the handling of complaints of child sexual abuse, this is consistent with the Vatican's understanding of this document as a draft document (DACI 2011, 50).

As already stated, the Congregation for the Clergy informed the bishops of Ireland that the document was a study document and not an official document of the Episcopal Conference (DACI 2011, 5). However, it would appear that some of the bishops understood that the guidelines in the Framework Document should be fully implemented, regardless of Vatican concerns (DACI 2011, 6-7). This contradicts Vatican regulations. For instance, in 2001 the Vatican released a letter titled, *Sacramentorum Sanctitatis Tutela*. In this letter it is stated that any allegations of child sexual abuse that have a semblance of truth should be referred to the CDF in Rome. The CDF could choose to handle the complaint itself or advise the bishop on the appropriate action to take in canon law. At this time no cases were reported to Rome (DACI 2011, 53).

Notwithstanding all of this, Bishop Magee in his capacity as Bishop of the Diocese of Cloyne reported to the Minister for Children in 2005 that the Framework Document guidelines were «fully in place and are being fully complied with». The Commission has evidence that this was not the case at least in relation to every detail and to the letter of the guidelines (DACI 2011, 12).

1.6.5. Commentary on the Cloyne Report

In concluding this discussion of the Cloyne Inquiry, we note the following general criticisms of the processes of the Diocese as far as they relate to the han-

dling of allegations of child sexual abuse: the Commission argued that a support system should have been put in place for victims of child sexual abuse (in addition to paying for the cost of counselling and pastoral care that was already offered to victims of child sexual abuse); it was argued that the independent advisory panel that the Diocese of Cloyne established was, in fact, not independent. However, the Commission is satisfied that there is now an independent advisory panel for the Diocese (DACI 2011, 10); poor documentation of complaints (DACI 2011, 14); canonical investigations were not carried out in four of the examined cases (DACI 2011,15); and priests who heard about complaints did not report them to the Diocese.

On a positive note, the Commission reported that in no case did the Diocese of Cloyne move alleged child sex offenders to another parish or out of the Diocese altogether (DACI 2011, 16). Furthermore, the Commission commended the Diocese for its efforts to train church members about child safety. The Commission also commended Bishop Magee and Archbishop Clifford for recruiting risk assessment specialists in 2009 to review diocesan files and to arrange risk assessments for a number of priests. The Commission was also satisfied that Archbishop Clifford had put in place an effective monitoring system for priests who were thought to be a risk to children. The Commission remarked, «In its Report into the Catholic Archdiocese of Dublin, the Commission stated that it accepted that the current archdiocesan structures and procedures for dealing with clerical child sexual abuse were working well» (DACI 2011, 20).

Lastly, the Commission reports that the bishop of Cloyne did encourage a training scheme (regarding child-safety) and by 2010, 100 of the 104 priests in the Diocese, who were still in active ministry, have been accredited and fully trained and only one priest requires further training (DACI 2011, 127).

1.6.6. Bishop Magee

As an addendum to the commentary on the Diocese of Cloyne we provide a case-study on Bishop John Magee, the Bishop of Cloyne, who found himself to be the subject of a complaint of historical child sexual abuse at the time of the Cloyne Inquiry. We note, despite the accuser's assessment of the event, this accusation was generally considered to be a case of a boundary violation that did not constitute child sexual abuse.

The accuser is a man called Joseph. As a young man, Joseph, who was either just under 18 or just over 18, and who had intended to become a seminarian, visited Magee alone to notify him that due to difficult personal circumstances he would not take up the offer to become a seminarian. It is agreed by both Magee and Joseph that at this meeting Bishop Magee hugged Joseph and told him he had dreamed of him and that he loved him. At the time Joseph interpreted the words and gesture as 'paternal' and he was not in any way uncomfortable. However, at a much later date, and in the light of media coverage of child sexual abuse and the Catholic Church, Joseph re-interpreted the events to be child sexual abuse and then complained to the Church, the Health Department and

the Garda (DACI 2011, 320). All of these organizations investigated the claims and found the words and actions to be inappropriate but not constitutive of child sexual abuse, and certainly not criminal behaviour (DACI 2011, 321, 326, 333). For instance, Bishop Magee claimed that he hugged Joseph in the same way that he had seen the Pope hug people when Magee worked in Rome for many years. Regarding the words spoken, Magee claimed that he said that he dreamed of Joseph becoming a lovely priest and he told him that he loved him because he was going through a difficult time, which had led him to decline the offer to become a seminarian (DACI 2011, 332). If Magee's account is honest, this is definitely not a case of child sexual abuse and rather a combination of well-intended words and actions that were overly demonstrative and inappropriate in the setting. If Magee's account is dishonest it is still not an act of child sexual abuse but merely a so-called boundary violation.

1.7. Measures that were put in place by the Church in Ireland

The following timeline indicates important dates and periods in relation to (alleged) incidents of child sexual abuse and the responses of the Catholic Church in Ireland in respect of the introduction of child safety measures.

1962 – Pope John XXIII issued a special procedural law for processing cases of priests who engage in soliciting sex in the sacrament of Confessional. The document required secrecy from all church officials involved. Priests, witnesses and complainants who breached the secrecy clause in this document were automatically excommunicated (Brundage 1987, 71).

Mid 1970s – This is the peak time as far as alleged acts of child sexual abuse in the Church are concerned. However, in the Church and in the broader community there is little knowledge of the extent of the problem. For instance, «there was no public, professional or Government perception either in Ireland or internationally that child sexual abuse constituted a societal problem or was a major risk to children» (DACI 2009, 111).

1975-2004 – Under canon law the period of prescription (statute of limitations) for complaints of child sexual abuse was five years (The Ferns Inquiry 2005, 72).

Late 1970s – Bishop Donald Herlihy (Bishop of Ferns) began to use psychological experts to assess priests accused of child sexual abuse.

Early 1980s – Awareness and knowledge of the scope and impact of child sexual abuse in Ireland emerged.

Early 1980s – In the early 1980s seminary training began to address the personal development of seminarians in St Peters, thus creating more resilient clerics who were less susceptible to the external factors that are a high-risk for regressed of-

fenders (The Ferns Inquiry 2005, 33). Prior to this, child sexual abuse was not discussed in seminaries (The Ferns Inquiry 2005, 25).

Mid 1980s – The Ferns Diocese utilised a treatment centre in Stroud, England (formed in 1959) to treat priests who are accused of child sexual abuse. The Diocese also used treatment centres in the USA. (The Ferns Inquiry 2005, 14-15).

The number of allegations of child sexual abuse began to decrease.

1982 – A few social workers from the Health Department visited California to learn how to work with victims of child sexual abuse.

1983 – The Irish Association of Social Workers held a conference on child sexual abuse in Dublin (DACI 2009, 112).

1983 – The Canon Law Society of Great Britain and Ireland in association with the Canadian Canon Law Society created, *The Canon Law: Letter & Spirit*. Canon 1395:2 of the 1983 code states «A cleric who has offended… against the sixth commandment of the Decalogue, if the crime was committed… with a minor under the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants» (The age limit was raised to 18 in 1996) (DACI 2009, 65).

1988 – Child sexual abuse assessment units are established in Our Lady's Hospital for Sick Children, Crumlin and in Children's University Hospital, Temple Street (the St Claire's Unit) (DACI 2009, 112).

1988 – The Ferns Diocese introduced improved screening processes for candidates wishing to enter the priesthood.

1989 – A course on the personal development of seminarians is developed and taught by psychologists (The Ferns Inquiry 2005, 33).

1991 – The Child Care Act 1991 came into being. Prior to this time the residential homes in the Irish Inquiry were not subject to statutory regulation (DACI 2009, 103-4).

Mid 1990s – From the mid-1990s it was argued that many people with a sexual orientation towards children cannot have their orientation changed. However, it was also widely believed that an attraction to children could be treated by psychologists and psychiatrists with therapy and drugs (The Ferns Inquiry 2005, 21).

1994 – The Irish Catholic Bishop's Conference established an Advisory Committee to create guidelines for handling allegations of child sexual abuse.

1995-96 – The Framework Document was sent to all dioceses. This document advised bishops to report all allegations of child sexual abuse to An Garda Siochana (the police) and the Health Board. Before this time there was no standard in Ireland for responding to allegations of child sexual abuse. Prior to this time Diocesan bishops formulated their own responses, albeit responses consistent with canon law. Bishops were authorized to restrict a priest's activities for the duration of an investigation (The Ferns Inquiry 2005, 39). However, in reality many bishops struggled with this process (The Ferns Inquiry 2005, 41).

1996 – The Child Care Act 1991was fully implemented (DACI 2009, 100).

1996-2008 – The Conference of Religious of Ireland and a number of Catholic dioceses including the Archdiocese of Dublin spent €700,000 on treatment initiatives for victims of child sexual abuse (DACI 2009, 137).

1999 – Bishop Eamonn Walsh established the Laffoy Commission, later called the Ryan Commission to liaise with the government's *Commission to Inquire into Child Abuse* (DACI 2009, 130).

2000 – Keven Doran (previous director of vocations, Archdiocese of Dublin) contacted the An Garda Síochána in an attempt to introduce police screening for candidates for the priesthood. Doran was advised that the Catholic Church was not eligible to receive police screening for its clerical candidates (DACI 2009, 156).

2001 – Pope John Paul II (2001) issued the document, *Sacramentorum Sanctitatis Tutela*. This document outlines new guidelines for handling grave offences including child sexual abuse.

2001 – The period of prescription (statute of limitations) was extended to ten years from the complainant's 18th birthday (DACI 2009, 72).

2001- The CDF was authorised to have oversight in cases of child sexual abuse (The Ferns Inquiry 2005, 13-14).

2002 – Bishop Walsh was appointed as Apostolic Administrator of the Diocese. He ensured that all outstanding allegations of child sexual abuse were reviewed with the newly created Advisory Panel. Walsh asked members of the public to report new allegations of child sexual abuse to the Gardai and the Health Board, also to report allegations of child sexual abuse that were previously not handled adequately to these agencies (DACI 2009, 131).

2002 – The National Child Protection Office of the Irish Bishops' Conference successfully lobbied the then Minister for Justice, Equality and Law Reform, to have the Church designated as a body that could seek vetting of prospective priests (DACI 2009, 156).

2002 – Pope Francis granted the CDF discretionary power to investigate complaints dating back longer than ten years (DACI 2009, 73).

2000-2003 – The Bishops' Committee on Child Protection (formally the Irish Bishops' Committee on Child Abuse) released *Time to Listen*. This report is an independent report that was Commissioned by the Irish bishops and undertaken by the Health Services Research Centre at the Department of Psychology, Royal College of Surgeons Ireland (The Ferns Inquiry 2005, 16).

2003 – The Archdiocese of Dublin established a Child Protection Service. Its role is to assist the Archdiocese in the implementation of child protection policies and procedures, and to provide pastoral care to victims of child abuse.

2005 – The Bishops' child protection office created a national training scheme. This course is taught at St Patrick's College, Maynooth (DACI 2009, 132). The Ferns Inquiry endorsed the formation training of the Maynooth College. It was claimed that there were more resources available to train students by comparison with the situation 40 years earlier, and that the college-maintained training throughout an ordinand's discernment, including offering conferences, lectures, advice, spiritual direction, and professional counselling. It was claimed that this resulted in students acquiring psycho-sexual-socio maturity (The Ferns Inquiry, 2005).

2005 – The Framework Document was reviewed and replaced by *Our Children Our Church* (DACI 2009, 132).

2006 – Garda vetting became available to the Church in Ireland through the Garda central vetting unit (DACI 2011, 129).

2009 – New guidelines were introduced by the National Board for Safeguarding Children. This board was set up in 2006 and replaced the bishops' Child Protection Office (DACI 2009, 133).

1.7.1. Commentary on the timeline

As mentioned earlier, the inquiry into the Diocese of Dublin rejected the diocese's claim that it was 'on a learning curve' prior to the late 90's regarding the handling of allegations of child sexual abuse. However, as we can see from the proceeding timeline, the Church in Ireland's developments regarding child sexual abuse were consonant with the broader community. For instance, prior to the mid-seventies there was little public knowledge regarding the scope or the extent of damage of child sexual abuse. It was only in the early 1980s that this knowledge emerged in Ireland. At this time, the Church began to implement training and screening in seminaries to try to combat the problem. The Church was, at times, proactive in finding solutions to the problem. For instance, canon laws were amended in ways that were more favourable to people making com-

plaints and demonstrated growing awareness of the problem. Moreover, priests who were sexual predators were sent to specialized treatment centres; albeit, this was not always successful. Not surprisingly, cases of child sexual abuse (relying on allegations of child sexual abuse made to the inquiry) did begin to decrease at this time. In 1996 the Child Care Act 1991 was fully implemented and the Church created further structural responses to child sexual abuse. However, they were not always entirely successful, i.e. the Framework Document. That said, some initiatives the Church put forward to combat child sexual abuse were impeded by other agencies, notwithstanding the Church's efforts to make improvements, i.e. in 2000 the Archdiocese of Dublin was informed that it was not eligible to police screen candidates for the priesthood.

1.8. Redress

The Irish Government had always envisioned a redress scheme would follow-on from the Ryan Inquiry and set about creating the Redress Board before the completion of that inquiry. In 2002 the *Residential Institutions Redress Act* was passed into law and the *Residential Institutions Redress Board* came into being. In keeping with the regulations in the Act the board made all previsions, including advertising in the media, to inform former residents of residential institutions of the purpose of the scheme, which is, to pay compensation to all victims of abuse (Republic of Ireland 2002, 6).

The redress scheme has a very broad definition of abuse including the catch-all words «any other act or omission towards the child» (Republic of Ireland 2002, 3). Moreover, the standard of proof is low, i.e. the 'balance of probabilities' test used in the civil court, with no requirement that the applicant prove legal fault. Also, all of the claims are historical in nature making the collection of evidence difficult. However, notwithstanding this, the Board does have a rigorous process for assessing claims. For instance, there is the provision for cross-examination. This is in contrast with the redress scheme in Australia where there is a lower standard of proof and no provision for cross-examination (see section 3:11.). Relevant details concerning the Irish redress scheme are as follows.

The board must make an award to an applicant if the board is satisfied that the applicant has: «(a) proof of his or her identity, (b) that he or she was resident in an institution during his or her childhood, and (c) that he or she was injured while so resident and that injury is consistent with any abuse that is alleged to have occurred while so resident…» (Republic of Ireland 2002, 7). Notwithstanding a low standard of proof the Board was granted the powers to write to people or institutions of interest and request information, request advisors prepare a report on the alleged injuries of the applicant (Republic of Ireland 2002, 9), assess the applicant including interviewing the applicant and medical advisors (Republic of Ireland 2002, 10), notify relevant people who are named in the claims and invite relevant people to provide evidence, and allow cross-examination of the applicant to protect the alleged abuser from potentially false allegations (Republic of Ireland 2002, 11).

Of note, when an applicant accepts an award the applicant is requested to sign a waiver stating that the applicant will not commence or will discontinue any other proceedings against the alleged offender and any relevant public bodies (Republic of Ireland 2002, 12). Lastly, the decision to award a payment does not constitute a finding of fact that the alleged offender in a claim carried out the acts alleged in the application (Republic of Ireland 2002, 13).

Notwithstanding some of the positive attributes of the redress scheme it has been the subject of much controversy. It has been claimed that, the Board was insensitive to applicants, that the scheme did not run for long enough, that the confidentiality clause in the award is unfair, and that most of the funding from the scheme has come from taxpayers (BBC News, 2009). To the topic of funding we now turn and the controversial request from the Government that the religious orders pay for half of the costs of redress (the other half to be paid by the Government). Notably, this request was challenged by religious orders in a document called, *The moral challenge posed to religious about the cost of redress* (2017).

This document reports that the Government set up the redress scheme without an agreement to halve the costs with religious institutions but that religious institutions offered to contribute «€128 million in "cash, counselling costs and real property"». At this time there were 1000 pending cases in the High Court against both the State and various religions congregations. Moreover, the redress scheme was created in 2007 before the impact of the global economic crisis and when, it is argued, the Government was flush with money (An oblate of Mary Immaculate 2017, 2-3). Religious institutions were reluctant to make more of a commitment given that the redress scheme was, in their words, overly generous. For instance, it is argued that it is easy to get an award and applicants do not have to prove that their injury was because of any fault or negligence on the institution's part (An oblate of Mary Immaculate 2017, 3).

Amidst mounting backlash, the Taoiseach Brian Cowen, T. D. and the Minister of Education Mr. Batt O'Keeffe, T.D, declared that the agreement with religious congregations could not be reopened. Notwithstanding this, the Government exerted, what has been called, 'moral pressure' on religious congregations to reimburse the Government on a 'fifty-fifty' basis for its expenditure under the redress scheme including: half of the costs of the awards to applicants under the Residential Institutions Redress Act, 2002; half of the administration costs; and, half of the costs of the work of the Ryan Commission of Inquiry itself. This occurred in the context of a significant economic downturn. Therefore, it has been argued that the Government was looking for a bailout of what was a poorly conceived scheme.

The religious congregations argued there was nothing immoral in their original offer of a fixed amount of money given they warned the Government about potential spiralling costs of the poorly conceived scheme. Moreover, religious congregations questioned the moral responsibility of others who were criticised in the report including, school authorities, the Dáil, the judiciary, and the Garda, who were not subject to moral pressure to finance the redress scheme or the inquiry (An oblate of Mary Immaculate 2017, 6-7).

1.9. Conclusion

Regarding the Ryan Report, it is evident that there was significant historical child abuse, including child sexual abuse, in industrial and reformatory schools that were largely run by religious congregations. However, it is important to stress that the significant problem of child sexual abuse in the Catholic Church in Ireland is historical. For instance, in the figures from the Confidential Committee in the Ryan Report 90% of the witnesses were first admitted to residential institutions between 1914 and 1965 (CICSA 2009, Vol. 3, 4.05).

Most of the allegations of abuse concern events alleged to have occurred in the 1960s (CICSA 2009, Vol. 3, 9.09). The allegations in the Investigative Committee also related to abuse that, if it occurred, then it occurred in the distant past. Indeed, the industrial schools which were a focus of this inquiry closed by the mid-70s. A substantial number of the allegations concerned alleged abuse that occurred 40 years prior to the closure of the industrial schools (CICSA 2009, Vol. 1, 5.38). The Murphy, Ferns, and Cloyne Inquiries also report the historical nature of the allegations.

Moreover, it is evident that the Church in Ireland did implement child-safety mechanisms which were consistent with those in place in the broader community. For instance, the State implemented child–care legislation in 1996, which was the same year that the Church began to implement child-safety mechanisms. On the other hand, our overview of the Cloyne Report showed that the Diocese of Cloyne failed on many fronts to fully implement, or adequately comply with, processes which were put in place to handle allegations of child sexual abuse. Notably, diocesan leaders failed to report allegations of child sexual abuse to the police and to the CDF, in accordance with canon law. Furthermore, the Diocese did not appoint support people to victims of child sexual abuse and did not operate an independent advisory panel, as they said they would.

However, we have also drawn attention to the understandable confusion regarding reporting allegations made against dead priests. We note the Diocese failed to report claims made against dead priests to the police and the Health Department. We have argued that the Diocese should have reported these claims to the police for the reason that doing so would help the police to compile evidence. However, we also argued that it was unnecessary to report dead priests to the Health Department, given that the Health Department is concerned with risk assessments.

In closing it is important to note that the Irish Inquiry was a source of healing for many victims of child sexual abuse. Many told their stories for the first time to the various inquiries. Others found a more compassionate ear from the inquiries than they had otherwise found in church leaders. Moreover, this inquiry made a concerted effort to ensure that victims of child sexual abuse were compensated (at least in part) for cases of child sexual abuse that would have been difficult, if not impossible, to prove in the court system. It is worth noting here that the effects of child sexual abuse are far-reaching and given the ages of the victims often reorientate the trajectories of the victim's lives. For instance,

disruptions in schooling at an early age can have a lifelong impact. Moreover, problems with trust that develop at an early age have far-reaching effects beyond the difficulties often cited regarding personal romantic relationships. Furthermore, and most shameful for the Church, the violation of a child by a person associated with the Church disrupts the flow of grace from the Church. Indeed, victims of child sexual abuse often say that as a result of the abuse they endured they have an uneasy relationship to the Church, and to faith more generally speaking. Thereby, child sexual abuse in the Church impedes the healing and salvific function of the Church, which is a great tragedy, and certainly puts the need for compensation in a better perspective. The Irish Inquiry spotlighted the deficiencies in church processes concerning the handling of complaints of child sexual abuse and initiated church reforms on this front.

CHAPTER 2

The John Jay Inquiry

2.1. Introduction

The analysis in this chapter focuses on the John Jay Inquiry into child sexual abuse in the USA. The John Jay Inquiry was commissioned by the Catholic Church – specifically, the Catholic Church in the USA. This is in contrast to the two other inquiries analysed in this work, i.e. the Irish Inquiry and the Australian Inquiry. The latter were not commissioned by the Catholic Church but rather by governments. In 2002 the United States Conference of Catholic Bishops approved the *Charter for the Protection of Children and Young People*. The National Review Board, which was established under this charter, in turn, commissioned the John Jay College of Criminal Justice to research into the nature and the scope of child sexual abuse by Catholic clergy in the United States of America

In 2003 and 2004 John Jay researchers sent an extensive survey to 195 dioceses which represented 98% of diocesan priests and 80% of religious priests. In this context a diocesan priest is to be understood as a priest who is in the service of the diocese to which he has been appointed and a religious priest is a priest who belongs to a monastic order or other consecrated order (Terry et al. 2004, 3). The survey contained a diocesan profile, a religious institute profile, a cleric survey of all members of the clergy who had an allegation of child sexual abuse made against them, and a victim survey to be filled out for each alleged victim of child sexual abuse. The John Jay Inquiry produced two reports. The first, *the Nature and Scope of Sexual Abuse of Minors by Catholic*

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Priests and Deacons in the United States 1950-2002, which was published in 2004, described the nature of child sexual abuse in the Catholic Church in the USA. For instance, it included information regarding where the alleged offences took place, the seriousness of the offences etc. The second report, *the Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010,* was released in 2011. This report is explanatory in nature; specifically, it offers explanations for incidents of child sexual abuse in the Catholic Church in the US increasing in the 1960s, peaking in 1970s and sharply declining in the 1980s (Terry et al. 2011, 2). The following information is sourced from these reports.

We have chosen to focus on the John Jay Inquiry since it represents child sexual abuse across the USA and is not restricted to a single or a small number of individual states. Moreover, the John Jay Inquiry has much to recommend it, both in respect of its methodology as well as its findings. Further, this inquiry has had a significant impact on the research into child sexual abuse undertaken by other inquiries. Thus, other inquiries, e.g. the Australian Inquiry (see Chapter 3) which occurred after the John Jay Inquiry, frequently reference it, accept some of its findings and utilize to some extent its methodology. However, this influence on other inquiries is not entirely a blessing. For some of John Jay's findings should have been subjected to scrutiny and yet have not been; rather they have been accepted uncritically by other inquiries, e.g. John Jay's claim that the male-on-male acts of child sexual abuse in the Catholic Church in the USA were situational rather than the result of sexual orientation, even if correct, is in need of further justification.

That said, the John Jay Inquiry generated some important statistics of allegations of child sexual abuse in the Catholic Church in the USA over many decades. We note that the John Jay Inquiry does not include allegations which were deemed by the John Jay researchers to be implausible. In this important respect it differs from the Irish Inquiry and the Australian Inquiry. The John Jay Inquiry rightly distinguishes between paedophile offenders and other child sex offenders, and concludes that only a small percentage of the offenders in their study were paedophiles. This is in stark contrast to many media reports on child sexual abuse in the Catholic Church. For example, this misleading headline by Barry James (2002) appeared in the New York Times, «Priests and pedophilia: a scandal not only in America». Yet, in the Nature and Scope study it is claimed that only 2 % of the allegations related to paedophilic behaviour (Terry et al. 54). Paedophilia being at the most serious end of the scale of child sexual abuse.

As with the other inquiries, the evidence provided by the John Jay Inquiry demonstrates that while child sexual abuse was a significant problem in the Catholic Church in the 1960s through to the early 1980s, there was no large-scale problem of child sexual abuse in the Catholic Church from at least the early 1990s until 2010 (the last year covered by the John Jay Report). Indeed, the allegations of child sexual abuse in the Catholic Church pertaining to incidents alleged to have happened post 2010 have continued to decline. For instance,

> In late June, the United States Conference of Catholic Bishops' Secretariat of Child and Youth Protection released its audit on clergy sexual abuse that covers the period July 1, 2018 – June 30, 2019. During this time, there were 37 allegations made by current minors. Eight were substantiated, 7 were unsubstantiated, 6 were unable to be proven, 12 are still being investigated, 3 were referred to religious orders, and 1 was referred to another diocese. Of the 49, 972 members of the clergy (33,628 priests and 16,344 deacons), .07% (37) had an accusation made against them for abusing a minor. However, since only .016% (8) could be substantiated, that means 99.98% of priests did not have a substantiated accusation made against them. In other words, clergy sexual abuse is near 0% (Donohue 2020). [We note here, that these numbers relate to reported cases and there are most likely more unreported cases. However, given the stringent safeguarding measures that the Catholic Church have put in place, and the greater awareness in the broader community regarding child sexual abuse, it is reasonable to expect that the unreported cases are also low.]

So contrary to media reports child sexual abuse in the Catholic Church in the US is in large part an historical problem. Indeed, according to the John Jay Inquiry and the other inquiries in the USA and worldwide, the Catholic Church responded to this problem in the 1990's in a manner that appears to have been effective, e.g. the introduction of a raft of child safety mechanisms.

2.2. Statistics of child sexual abuse in the Catholic Church in the USA

The data from the survey instruments that were sent to Catholic bodies showed that there were 4,392 priests who had been the subject of an allegation of child sexual abuse in the period 1950-2002. These allegations do not include allegations that were withdrawn or known to be false. While this is a small percentage of priests, and they include unproven allegations of offences, nevertheless, this number is large in absolute terms. Indeed, alarmingly so, and indicates that there was a significant problem of child sexual abuse within the Catholic Church in the USA. The significance of the problem is magnified in the light of the fact that the Catholic Church, as a Christian institution, professes to be a protector of the innocent.

There are in fact two percentage numbers of priests with allegations of child sexual abuse provided in the John Jay Report. This discrepancy occurred because there is no definite number of all priests who were active between the years of 1950-2002. The data supplied by the Catholic Church states that there were 109, 694 priests who served during the period 1950-2002. If these figures are accurate then the percentage number of priests who served from 1950-2002 and who have been the subject of allegations of child sexual abuse is 4%. However, the Center for Applied Research in the Apostolate claims that there were 94,607 priests who served in the period from 1960-2002. Moreover, they claim that the number of priests with allegations of child sexual abuse over this period was 4,127. If this second set of figures are accurate then, 4.3% of priests were

the subject of allegations of child sexual abuse. The percentage of serving priests in any given year who were alleged to have abused children, in that year or any other year, changed over the period from 1960-2002. For instance, in 1970 the figure is 10%, in 1990 the figure is less than 4%. This downward trend has continued over the past two decades, i.e. 0.07% over 2018-19.

75% of these allegations (the 4392 figure) pertained to events that were alleged to have taken place between 1960 and 1984 (Terry et al. 2004, 27). The total number of complaints against priests in relation to events that were alleged to have taken place over this period is 10,667 (Terry et al. 2004, 4). The duration of the alleged abuse of any given complainant is as follows: 38.4% – within a year; 21.8% – more than a year but less than two years; 28% – between two and four years; 10.2% – between 5 and 9 years; and in less than 1% – ten years of more (Terry et al. 2004, 5). 56% of accused priests were alleged to have committed abuse against one alleged victim, 27% were alleged to have committed abuse against two or three alleged victims, 145 were alleged to have committed abuse against four to nine alleged victims and 3.4% were alleged to have committed abuse against more than ten alleged victims. The 149 priests in the latter category (more than ten alleged victims) are allegedly responsible for abusing 2,960 alleged victims which is 26% of the total of alleged victims (Terry et al. 2004, 8). 55% of the priests were the subject of one allegation of child sexual abuse, 26.9% were the subject of 2-3 allegations, 13.9% were the subject of 4-9 allegations, and 3.5% were the subject of more than 10 allegations (Terry et al. 2004, 51).

1,021 priests who were the subject of an allegation of child sexual abuse, or 24% of the total, were reported to the police. In most cases these reports led to investigations. Criminal charges were laid in 384 instances. It is not stated whether an individual charge relates to an individual priest or whether multiple charges were laid against a single priest. 252 of these priests were convicted and at least 100 of these priests served time in prison. In percentage terms, 6% of priests who were subject to an allegation of child sexual abuse were convicted and 2% of those received prison sentences, up until 2004 when the Nature and Scope Report was written (Terry et al. 2004, 10). Accordingly, 252 priests out of a total of 94,607 priests (roughly 0.27 %) who served during the period 1960-2004 were proven in a criminal court to have committed child sexual abuse. However, the number of offending priests is, most likely, far higher for the following reasons: (1) it is difficult to prove child sexual abuse in a criminal court; and, (2) only 24% of allegations were reported to the police.

It is generally agreed by researchers that offenders that are convicted of child sexual abuse represent a minority of cases. Indeed, it is claimed that sexual offences are the crimes that are least likely to be reported, at least as far as serious crimes are concerned (Terry et al. 2004, 23).

2.3. Nature of the complaints

The John Jay Inquiry anonymised the details of the priests and the complainants (Terry et al. 2004, 17). The allegations in the study include unsubstantiated

allegations. However, they do not include, what the study calls, «an implausible allegation». The definition of an implausible allegation is as follows:

> An implausible allegation is one that could not possibly have happened under the given circumstances (e.g., an accusation is made to a bishop about a priest who never served at that diocese). Erroneous information does not necessarily make the allegation implausible (e.g., a priest arrived at the diocese a year after the alleged abuse, but all other facts of the case are credible and the alleged victim might have mistaken the date) (Terry et al. 2004, 20).

Of note, less than 5% of the priests who were alleged to have committed acts of child sexual abuse exhibited behaviour that is consistent with paedophilia – such as abusing pre-pubescent children (Terry et al. 2011, 3). In the Nature and Scope study (2011) it is claimed that 2 % of the allegations related to paedophilic behaviour. Paedophilic behaviour is defined in the following terms, «the exclusive presence of two or more victims under the age of eleven» (54). By contrast, ephebophilic behaviour is defined in the following terms, «the exclusive presence of two or more male victims between the ages of thirteen and seventeen». According to this definition 18.9 % of the accused priests from the clinical files of the Causes and Context study could be classified as ephebophiles. When these figures are considered in relation to the overall number of priests in the Nature and Scope study (4,392 alleged abusers), it is claimed that 2% of the alleged abusers could be classified as paedophiles (attracted to pre-pubescent children) and 10.8% could be classified as ephebophiles (attracted to 13-17-year-olds, by the John Jay definition). The priests who are not included in this number are alleged to have committed offenses against a single victim or abused victims of different ages (Terry et al. 2011, 54). For instance, the John Jay Inquiry also include a category of offenders which they term, generalists. Generalist offenders are categorized by a pattern of offending against both pre-pubescent, pubescent and post-pubescent children. Below we discuss different types of offenders, as they are classified in the John Jay Report.

2.4. Ephebophilia

Special mention must be made here of ephebophilia, given that this designation is controversial and confusing. For instance, some scholars distinguish between a 'hebephile' who is attracted to a young pubescent child (usually 11-14) and an 'ephebophile' who is attracted to older teens (usually 15-19) (Prentky and Barbaree, 2011). However, the John Jay Inquiry consider an ephebophile to be an adult who is attracted to 13-17-year-olds (Terry et al. 2011, 53). Of course, the fact that puberty occurs at different times for different children also needs to be taken into account.

Neither hebephilia nor ephebophilia are considered mental disorders by the Diagnostic and Statistical Manual of Mental Disorders (DSM – V). For it is generally agreed that it is normal for a healthy man or woman to have an attraction to an adolescent who displays the physical features of an adult. However, many

researchers consider people who have recurrent sexual fantasies about adolescents and urges to engage in sexual behaviour with adolescents to be abnormal and to constitute a specific paraphilia displaying group. Thus, hebephiles and ephebophiles are considered by many researchers to be people suffering from psychological pathologies (Terry et al. 2011, 53).

Martin Kafka (2004) claims, in a report commissioned by the Vatican, that the typical Catholic priest who abuses children is an ephebophile. Moreover this is a popular belief. However, a problem emerges with Kafka's claim. Specifically, most of the cases of child sexual abuse detailed in the John Jay Inquiry are claimed to be one-off offences, i.e. it is argued that perpetrators committed only one act of child sexual abuse, which suggests that these acts are not manifestations of a pathology. Indeed, the John Jay Inquiry claims that clerics who committed acts of child sexual abuse displayed fewer paraphilias than offenders who were not clerics (Please see Haywood et al. 1996). However, it is still significant that clerical abusers often abuse males who are older children, i.e. 13-17 years of age (Terry et al. 2011, 54). Yet, maybe the answer here is that these men are not driven by known pathologies but instead by the power imbalance. For example, many of the alleged offenders threatened their alleged victims in order to silence them. It could be argued that a 20-year-old is less susceptible to such threats. A further area of interest concerns the classification of offenders according to the underlying cause of their offending, i.e. compulsiveness or poor judgement due to alcohol abuse etc.

2.5. Fixated and regressed offenders

Classifying offenders by means of factors relating to their psychological make-up rather than merely by the nature of their offences is greatly influenced by the work of Groth et al. Groth et al. (1982) classify child sexual offenders into two distinct classifications, fixated and regressed offenders. Fixated offenders are characterized as having a persistent, continual and compulsive attraction to children. They are usually diagnosed as paedophiles. Paedophiles tend not to be related to their victims and paedophiles begin to be attracted to pre-pubescent children during their (the paedophiles') adolescence. Moreover paedophiles, being fixated offenders, do not develop past the point where they find children attractive and desirable. Further, the actions of paedophiles and other fixated offenders are typically premeditated, usually repeated, and do not result from stress (as is often the case with regressed offenders).

In contrast to the fixated offender, the regressed offender usually begins to offend in adulthood. This type of sexual offender is characterized by having disordered childhood relationships and offends as a result of environmental stressors. The stressors can be, among other things, unemployment, marital problems and substance abuse, or may be related to negative affective states such as loneliness, stress, isolation or anxiety which produce low self-esteem. Regressed offenders are more likely to commit acts of child sexual abuse that are opportunistic and one-off offences, i.e. they are typically situational offenders. This is an import-

ant distinction because it means that reducing stressors in priests, and others, can potentially reduce cases of child sexual abuse.

2.6. Male-on-male abuse

The John Jay Inquiry revealed that, when the sex of an alleged victim and of the alleged perpetrator were reported, 81% of the alleged victims were male and 100% of the alleged perpetrators were male (Terry et al. 2004, 69). However, the John Jay Inquiry did not find a correlation between a firm homosexual orientation and male-on-male acts of child sexual abuse. For instance, according to the inquiry:

> The data do not support a finding that homosexual identity and/or preordination same-sex sexual behavior are significant risk factors for the sexual abuse of minors. The only significant risk factor related to sexual identity and behavior was a "confused" sexual identity, and this condition was most commonly found in abusers who were ordained prior to the 1960s (Terry et al. 2011, 64).

This finding requires some commentary. The Nature and Scope analysis shows that there was an increase in the number of male victims (at the hands of male perpetrators, i.e. priests) in the peak years of abuse, the 60s and 70s. This gave rise to two possible hypotheses: (1) that the priests sought out male victims at this time or; (2) that the priests abused the children that they had access to, irrespective of whether these children were male or female. In these peak years it is argued that access was mostly to male children – especially to altar servers who could only be male prior to revisions in canon law in 1983 – and therefore, the priests in their study abused the children who were available to them (Terry et al. 2011, 108). Of course, if priests *only* had access to boys then there would be few, if any, instances of sexual abuse of girls; after all, opportunity is a necessary condition of committing an offence. However, it would not demonstrate that the priests did *not* have a sexual preference for boys; after all, motive is also (typically) a necessary condition of committing an offence. Moreover, there is no firm indication that most, or even, many of the victims were altar servers. In the table 5.3 *Nature and Scope: Location Where Victims met the Priests Who Abused Them* altar servers only account for a small percentage (12.3%) of the alleged victims. Moreover, the number of choir members was less than 1% (Terry et al. 2011, 108). The greater number of victims were first encountered by offending priests in the general Church community, at Mass (Terry et al. 2011, 109).

Notwithstanding this inconsistency, the John Jay Inquiry favoured the hypothesis that the male-on-male acts of child sexual abuse in their study were constitutive of situational homosexuality. They argue that this claim correlates with another claim they make – that most of these historical offences were typical of regressed (i.e. situational) offenders. Regressed sexual offenders offend against individuals who are available to them and are purely opportunistic in their offending. Moreover, regressed offenders are more likely to be one-off offenders (many of the offenders in the John Jay study were of this type) in contrast to fixated offenders who typically commit multiple acts of child sexual

abuse (the minority of offenders in the John Jay study are of this type). The John Jay researchers claim that clerical offenders in the Catholic Church were not driven by a fixation on a certain type of victim. If we accept this is true, we still need to remind ourselves that from the mere fact that a child sexual offender is regressed rather than fixated, it does not follow that the offender does not have a sexual preference/orientation and, in the case of a homosexual child sexual offender, a predisposition to seize opportunities to abuse boys and ignore opportunities to abuse girl. Certainly, it would be wrong to assume that most regressed offenders by virtue of being regressed do not have determinate sexual orientations and, therefore, are neither homosexual, heterosexual nor bisexual in their sexual orientation but simply engage in sexual relations with children (and adults?) of either sex, supposing they are available.

However, the John Jay researchers claim that the situational thesis is consistent with findings relating to the percentage of female victims. They claim that the percentage of female victims increased in the late 1990s and 2000s, when priests had more access to females in the Church (Terry et al. 2011, 106). Yet, this latter claim of increased opportunity is not supported by the data in their reports. For example, there were, proportionately, more female victims in the 50s than in the 90s which would appear to discount the argument based on an increase in female altar servers (Terry et al. 2011, 106).

Moreover, from 1950-1999 (almost the entire duration of the scope of the study) the instances of male-on-male instances of child sexual abuse were significantly higher than those of male-on-female instances of child sexual abuse. The only significant change is the last two years of the survey from 2000-02 where 55.2% of the victims are boys and 44.8% of the victims are girls. However, this small slice of the sample is not enough to make a credible claim. To begin with this only represents 2 years as opposed to 50 years. Furthermore, the number of victims in those 2 years is minimal – about 40. This is in contrast to the sample of the other 50 years which included 1000s of cases (Terry et al. 2011, 106).

Moreover, the justifying 'evidence' in the John Jay Inquiry contradicts their claims. For instance, the John Jay researchers claim that opportunity plays a significant role in the choice of victims. To support this claim, they include information from Victim Assistance Coordinator and Survivor Surveys. These surveys discuss the access priests had to children including spending extended hours in the children's homes socializing with the families. This is consistent with John Jay's own evidence in the Nature and Scope Report. However, this is not consistent with the claim that priests abused boys because they only had access to boys, particularly, altar servers. In addition, Paul Sullins (2018) argues the following, «the data …present a picture of men [Catholic priests] who, when younger boys are replaced by younger girls, prefer older boys rather than younger girls as victims» (36). The case of Fr Bernard, in the IICSA inquiry, is relevant here. He abused boys and then later sexually harassed adult men when he had limited contact with children (IICSA 2018, 59).

The John Jay researchers also claim that there has been an increase in homosexual men in the seminary; however, the instances of male homosexual child

sexual abuse have decreased. Therefore, they claim that male homosexuality is not related to child sexual abuse in the Catholic Church. Yet, this is another claim that has been contested. According to Sullins (2018), this claim is false because it relies on a poor (and confused) indicator of the number of homosexual priests, namely, seminarians and ordinands who 'came out'. But, as Sullins points out, ordinands and seminarians are only a tiny proportion of Catholic priests, and the number of seminarians 'coming out' understates the actual number of homosexuals (683). Rather Sullins relies on a *Los Angeles Times* survey (also used by the John Jay Inquiry for other purposes). Says Sullins (2018): «The share of homosexual men in the priesthood rose from twice that of the general population in the 1950s to eight times the general population in the 1980s. This trend was strongly correlated with increasing child sex abuse» (693). Therefore, he argues that this claim from the John Jay researchers is contested on the grounds that it relies on «subjective clinical estimates» and «second hand narrative reports of apparent homosexual activity in seminaries» that might not be reliable and, even if reliable, not representative (Sullins 2018).

The common-sense approach here must conclude that the self-reporting of homosexuality increased over time when homosexuality was no longer a crime. Moreover, the common sense approach would suggest that there has been a decrease in homosexual, heterosexual and/or bisexual acts of child sexual abuse in the Church because of a growing awareness of the harm of child sexual abuse and introduced measures to combat it. More on this point in the closing remarks.

To re-iterate, the John Jay researchers claim that most acts of male-on-male child sexual abuse are not the product of a homosexual orientation. They argue stridently that sexual behaviour is not necessarily an indicator of sexual identity (Terry et al. 2011, 62). As already stated, the John Jay Inquiry distinguishes between homosexual acts and homosexual identity and argues that most of the cases of male-on-male child sexual abuse in their report were not perpetrated by men with a homosexual identity but were rather the product of situational homosexuality. The John Jay researchers claim that it is possible, and indeed for the purposes of their argument, common, for a person to participate in a same-sex sexual act without identifying as being homosexual. For instance, «It is therefore possible that, although the victims of priests were most often male, thus defining the acts as homosexual, the priest did not at any time recognize his identity as homosexual» (Terry et al. 2011, 36).

This raises an important point, i.e. generally, scholars have not assumed that male-on-male acts of child sexual abuse imply that the adult is a male homosexual (and certainly not that the child has a homosexual orientation). For instance, in Ruzicka's (1997) study into clerical abusers it is noted that 8 out of 10 of the perpetrators reported a preference for boys (589-90). However, 7 of the perpetrators identified as being homosexual or bisexual and 3 of the perpetrators identified as being heterosexuals. In broader scholarship, general arguments concerning sexual orientation and sexual preference are not settled and are complicated areas of study. Notably, the very notion of orientation is contested with some groups preferring to speak of sexual fluidity and homosexual acts instead of homosex-

ual orientation. Moreover, it is worth keeping in mind that the thesis that male-on-male acts of child sexual abuse are situational in nature and not connected to a homosexual orientation is disputed by, indeed apparently found be offensive to, many members of the homosexual community. Generally, the LGBTQI community claim that any argument concerning situational homosexuality is largely heteronormative in its outlook. It is their claim that it is heteronormative because it diminishes the homosexual sex act to a sex act that was only entered into because of the lack of a more suitable partner (Cronin 2006). Moreover, evidence from the IICSA would seem to challenge the claims made by the John Jay Inquiry. For instance, the IICSA provides details of the pornographic content that predator monks, who only had access to boys, and who were charged with child sexual abuse, were accessing on the internet, i.e.

> …RCF18…was arrested in February 2004 for several offences including buggery, indecent assault and incitement to commit gross indecency offences. His computer was also seized and searched as part of the police enquiry; pornographic material was found, as well as evidence that he had posed as a 19yearold girl in order to engage in sexually explicit online chats with males. DSU Honeysett told us that while this material "clearly indicated an interest in adolescent boys, there was no evidence to show that those boys were [in fact] under age" (IICSA 2018, 55).

Finally, the John Jay Inquiry suggests that those who are confused as to their sexual identity, and not affirmed homosexuals, are at a higher risk of committing child sexual abuse, than those who report as being unambiguously heterosexual or unambiguously homosexual. There is no mention of affirmed bisexual orientation. Notably, priests who were ordained prior to 1960 and who had a confused sexual identity were more likely to abuse than those who were not confused about their sexual identity (Terry et al. 2011, 64). We suggest that it is likely that prior to 1962 many homosexuals – including many homosexual priests – were confused about their sexual identity, given that sodomy was a felony in every state in the USA prior to 1962 and was punishable by a lengthy gaol term. Accordingly, if there is a correlation between priests being confused about their sexual identity and being child sexual abusers, this does not necessarily tell against these priests being homosexuals. Moreover, it is also possible that offenders with a confused sexuality, including priests, were themselves abused. For instance, a number of the alleged victims who spoke to the Australian commission of inquiry into child sexual abuse (see section 4.4.) said that their sexuality had been confused as a result of an act of child sexual abuse. We note that there is mounting evidence to suggest that men who have been victims of male-on-male child sexual abuse are more likely to be become male-on-male offenders as they mature[1].

[1] «In a meta-analysis of eighteen studies from1965 to1985, Hanson and Slater found that adult sex offenders who had perpetrated offenses against a male child were more likely to

2.6.1. Closing remarks – male-on-male acts of child sexual abuse

The issue of the prevalence of male-on-male acts of child sexual abuse in the Catholic Church is contentious. Indeed, the Catholic Church has gone so far as to prohibit the ordination of men with «deep-seated homosexual tendencies» and done so in large part as a child safety measure (Congregation for Catholic Education 2005). This policy has been, to say the least, highly controversial in the Catholic Church. However, from the perspective of an integrity sub-system focused on child safety it does have the virtue of seeking to address what the statistics would seem to indicate is in fact a problem in the Catholic Church or, at least, has historically been a problem and one which, given it is seemingly based on sexual orientation (specifically, an orientation of male adult on male boy) and/or a permissive culture within the relevant homosexual community (predatory homosexual sub-cultures (Please see Sullins 2018, 671-97)) and/or opportunity, is unlikely to go away or, given the evidently historical nature of the problem, stay away, absent countervailing interventions.

That said, there are two important points to make here: (1) child sexual abuse in the broader community usually involves a male perpetrator and a female victim. Indeed, it usually involves a male family member and a female child. The figures in the Church are an anomaly. For instance, according to Sullins (2018):

> The most striking feature of sexual misbehavior by Catholic clergy is not that it is more common than in similar institutions or communities – rather, by most comparisons, it's substantially less. What is notable is that the large majority of victims are male. In most settings the victims of male sexual assault are generally female, but in U.S. Catholic parishes and schools over the past 70 years, the victims of sexual assault by male Catholic priests have been overwhelmingly male (682).

This premise is also supported by the findings of the German Inquiry into child sexual abuse. 83% of the alleged victims in the German Inquiry (which concerned child sexual abuse in institutions and the broader society) were women and more than half of them were alleged victims of incest (Deutsche Welle 2020).

(2) Child sexual abuse in the Catholic Church is largely an historical problem. Therefore, male on male cases of child sexual abuse in the Church have diminished significantly. Here we argue that the homosexual community has already delegitimized predatory sub-cultures within its own community. For example, gay activism in North America in the 70's was connected to paedophile promotion groups such as NAMBLA (North American Man Boy Love Association). However, in the mid-nineties, the International Gay and Lesbian Association, under pressure from its own members, who were strongly opposed to paedophile promotion groups, dissolved its association with NAMBLA (LGBT Project Wiki n.d.).

have a history of childhood sexual abuse (39 percent) than those who had perpetrated offenses against only female children (18 percent)» (Terry et al. 2011, 95).

2.7. Historical problem

The John Jay Inquiry claims that more abuse occurred in the 70's than any other decade with incidents of child sexual abuse peaking in 1980. Furthermore, the report claims that allegations of abuse that are alleged to have occurred in recent years are relatively small. 89.3% of priests with allegations of child sexual abuse in this study were ordained prior to 1979 (Terry et al. 2004, 5). Hence, the finding that the problem of child sexual abuse, in as much as it involves very large numbers of allegations, is historical. This is not to discount the fact that child sexual abuse still occurs in the Church, and most probably, still occurs in larger numbers than are reported, given delays in reporting child sexual abuse. However, it is to discount the dominant narrative in the media that large numbers of currently serving priests are sex offenders. Take the following quote from the John Jay Inquiry for example:

> The "crisis" of sexual abuse of minors by Catholic priests is a historical problem. The count of incidents per year increased steadily from the mid-1960s through the late 1970s, then declined in the 1980s and continues to remain low. Initial estimation models that determined that this distribution of incidents was stable have been confirmed by the new reports of incidents made after 2002. The distribution of incidents reported since 2002 matches what was known by 2002 – the increase, peak, and decline are found in the same proportions as those previously reported. A substantial delay in the reporting of sexual abuse is common, and many incidents of sexual abuse by priests were reported decades after the abuse occurred. Even though incidents of sexual abuse of minors by priests are still being reported, they continue to fit into the distribution of abuse incidents concentrated in the mid-1960s to mid-1980s (Terry et al. 2011, 2-3).

The John Jay Inquiry argue that the rise of incidents of child sexual abuse in the 60s and 70s can be directly attributed to the rise of 'deviant' behaviour at this time, such as, drug use, crime, and divorce (Terry et al. 2011, 3). In this context a deviant act is described as an act that is contrary to the principles of the institution. For example, clerical child sexual abuse negates the purpose of the Church as an institution with the purpose of bringing forth grace. Divorce is described, in this context, as an act that is made for personal reasons and for this reason is contrary to the purpose of the institution. Criminal acts are acts that are contrary to societal and legal norms. The John Jay data shows that drug use, crime and divorce in the USA increased by 50% between 1960 and 1980. Moreover, the rise and fall of divorce rates and the rates of homicide and robbery are consonant, that is, stable in 1965, sharply peaking in 1980, and then falling. The spike in divorce rates is significant given that the children of divorced parents are at a higher risk of child sexual abuse than children from stable homes are. It is also worth considering, as mentioned previously, that there were a number of paedophile promotion groups operating openly in the 70s. These organisations include, among others, the North American Man/Boy Love Association (NAMBLA) which formed in the seventies. In addition to this and correlated

with this, the seventies also saw the influence of French postmodern theorists who argued in favour of child/adult sex. See, for instance, Michel Foucault's argument in his influential book, *The History of Sexuality*. Moreover, Foucault, along with other French intellectuals, including Jacques Derrida, Jean-Paul Sartre and Simone de Beauvoir, signed a petition in 1977 in response to the imprisonment of three men for sexual crimes against 12-and 13-year-olds. The petition states,

> French law recognises in 12-and 13-year-olds a capacity for discernment that it can judge and punish but it rejects such a capacity when the child's emotional and sexual life is concerned. It should acknowledge the right of children and adolescents to have relations with whomever they choose (Francoise Dolto n.d.).

Regarding this case, there were clearly laws in place to protect children from abuse, and the premise that many French people were in favour of child/adult sexual relationships must be rejected. However, the influence of Foucault and other French intellectuals in the gay community was/is significant. For example, queer theory builds on the work of Foucault (among others) and Simone de Beauvoir (1973) is credited with being one of the first gender theorists, i.e. «one is not born a woman; one becomes a woman».

The John Jay researchers argue that the following factors contributed to the decline in incidents of child sexual abuse in the Catholic Church in the USA: a growing awareness of the harm of child sexual abuse; the enactment of government laws; a growing understanding of the causes of child sexual abuse; child safety mechanisms in the Catholic Church; better treatment for offenders; and improvements in seminary training (Terry et al. 2011, 3).

2.8. Measures that were put in place by the Church

The following timeline indicates important dates and periods in relation to (alleged) incidents of child sexual abuse, and the responses of the Catholic Church in the USA in respect of the introduction of child safety measures. This is not an exhaustive list of all of the policies that have been put in place up until this time, nor does it catalogue all of the changes that are currently taking place in response to these inquiries. Instead, this section gives an overview of the history of child-safety measures that have been adopted in the Catholic Church in the USA. It also provides some context for the discussion. For instance, we compare the development of Church policies with the development of State regulations. We also note that while this list looks somewhat impressive it does not demonstrate whether or not church leaders complied with the policies outlined. Evidence from the inquires suggests that policies relating to child sexual abuse were not uniformly applied and it was often the case that the integrity of any given bishop determined how stringently these regulations were adhered to. It is also argued that these policies were often enforced as far as lay offenders were concerned but not in relation to clerical offenders. That said, the Church has stringent child-safety policies, especially by comparison with most other institutions in which children are present in large numbers. For instance, it has

widely been reported in the inquiries that the Church have invested significant resources to ensure the protection of children.

1970s – There was an increasing awareness of the harm of child sexual abuse amongst academics. However, there was still uncertainly regarding the extent of the harm or even if there was harm in most cases. For instance, in 1978 academics R. S. Kempe and C. H. Kempe remarked, «Most sexual molestation appears to do little harm to normal children» (Terry et al. 2011, 96).

1976 – The Servants of the Paraclete opened a treatment programme which included the treatment of disorders associated with child sexual abuse (Sipe n.d.).

1980s – In the broader community there was still little understanding of child sexual abuse. For example, the Association for the Treatment of Sexual Abusers (ATSA) admitted that their understanding of child sexual abuse had been incomplete or false. This is not surprising given that rigorous research had not yet been conducted and effective prevention and treatment strategies were only beginning to emerge (Terry et al. 2011, 79).

- There was an increase in the use of treatment programs, notably specialized sex-offender treatment programs, to treat priests who had abused children. The focus of these treatments is often relapse prevention (Terry et al. 2011, 80).
- Researchers began to focus on the trauma of sexual abuse.

1983 – The harm of sexual abuse is reportedly considered among influential psychological practitioners to be a form of post-traumatic stress (Terry et al. 2011, 96).

1980s – The introduction of 'Human Formation' in seminary training.

Most of the priests who were the subject of allegations of child sexual abuse were trained in seminaries prior to the 1970s. It is argued that the introduction of Human Formation – the development of psychological tools to live a life of celibacy effectively – had a role to play in the decreased number of incidents of child sexual abuse after 1985 (Terry et al. 2011, 5).

1985 – The National Conference of Catholic Bishops (NCCB) began a formal discussion about child sexual abuse (Terry et al. 2011, 75).

- There was a sharp decline in cases of child sexual abuse. This is attributed to activism on the part of victims of clerical abuse, improved awareness of child sexual abuse and improved responses to child sexual abuse on the part of the Catholic Church.
- A common problem in relation to child sexual abuse was that the response differed across dioceses. The John Jay Report claims that at this time the media concentrated its attention on bishops who were performing poorly which engendered the view that the bishops as a whole were not responding effectively to child sexual abuse, despite this not being the case (Terry et al. 2011, 4).

Mid 1980s onwards – The NCCB worked with diocesan leaders to ensure immediate and responsible responses to allegations of child sexual abuse, including prompt psychological treatment for the priests involved. Furthermore, the NCCB began a training program and encouraged the development of explicit policies, and distributed strategies for responding to litigation (Terry et al. 2011, 77).

Late 1980s – Church leaders became sceptical of the claims of psychological treatment centres when they discovered that priests who had been the recipients of treatment had committed new offences (Terry et al. 2011, 80).

1990s – The Child Protection Act of 1990 came into being (Terry et al. 2011, 98).

1991 – The Archdiocese of Chicago commissioned a report on clerical child sexual abuse (Terry et al. 2011, 86).

1992 – The Cardinal's Commission on Clerical Sexual Misconduct with Minors was made public. Reforms were made by the Chicago Diocese. Priests who were accused of child sexual abuse were removed from ministry. The Archdiocese created an independent review board comprised of psychologists, psychiatrists, and lawyers (Kelly 1998, 303-18).

1992 – The Policy on Priests and Sexual Abuse of Children was released by the Office of Media Relations of the United States Catholic Bishops Conference (USCBC). It states: «[W]hen there is even a hint of such an incident, investigate immediately; remove the priest whenever the evidence warrants it; follow the reporting obligations of the civil law; extend pastoral care to the victim and the victim's family; and seek appropriate treatment for the offender» (Terry et al. 2011, 81).

1992 – The American bishops called for diocesan leaders to use of the 'Five Principles' in relation to allegations of child sexual abuse. The Five Principles are as follows:

> (1) respond promptly to all allegations of abuse where there is reasonable belief that abuse has occurred; (2) if such an allegation is supported by sufficient evidence, relieve the alleged offender promptly of his ministerial duties and refer him for appropriate medical evaluation and intervention; (3) comply with the obligations of civil law regarding reporting of the incident and cooperating with the investigation; (4) reach out to the victims and their families and communicate sincere commitment to their spiritual and emotional well-being; and (5) within the confines of respect for privacy of the individuals involved, deal as openly as possible with the members of the community.

80% of the dioceses utilized the five principles in some ways. However, they diverged in their use of the principles and it is generally agreed that the response was poor (Terry et al. 2011, 86).

1993 – The NCCB held a meeting with experts in the field of child sexual abuse. The discussion concerned improving care for victims of child sexual abuse, improved screening of ordinands, improved education and improved guidelines for relapse prevention and reassignment (Kelly 1998, 303-18).

1993 – The Ad Hoc Committee of Sexual Abuse was announced. The mandate of the Ad Hoc Committee is to support victims of clerical abuse and their families, and improve screening processes for priests and lay church workers (Terry et al. 2011, 82).

1993-1994 – The Ad Hoc Committee surveyed dioceses and eparchies about their policies for responding to allegations of child sexual abuse. 60% of the dioceses reported that they had implemented a policy for handling cases of clerical child sexual abuse (Terry et al. 2011, 86-7).

1994 – 1995 – The Ad Hoc Committee on Sexual Abuse released a report on treatment facilities (Terry et al. 2011, 82).

1997 – The Ad Hoc Committee gathered more information about diocesan policies for handling allegations of child sexual abuse. More than half of the dioceses surveyed had a person who had designated responsibility for cases of clergy sexual abuse, most of the dioceses who responded had established a review board and were performing background checks of church workers and volunteers (Terry et al. 2011, 86-7).

2001 – The rate of abuse in 2001 was 56 % less than the rate of abuse in 1992. The rate of decline is greater in the Catholic Church than it is in the broader community (Terry et al. 2011, 13).

2002 – The National Review Board conducted a survey of the dioceses and eparchies. It is discovered that 96% of the dioceses had a public policy regarding measures in relation to child sexual abuse, 81% had a review board, and 68% report that clergy were defined as mandatory reporters of child sexual abuse in keeping with State regulations (Terry et al. 2011, 86-7).

2002 – The United States Conference of Catholic Bishops (USCCB) promulgated the Charter for the Protection of Children and Young People at its meeting in June. The purpose of the charter was to address the issue of child sexual abuse by priests within the Catholic Church in the US. Two bodies were created from this charter – the National Review Board and the Office of Child and Youth Protection (OYCP). These bodies shared a mandate to investigate the prevalence of child sexual abuse, the causes of clerical child sexual abuse, and complaints handling procedures in the Catholic Church in the US. Two academic investigations were commissioned in order to satisfy this mandate – The John Jay Report. The National Review Board approached the John Jay College

(New York) because it is a secular institution which specializes in criminal justice, criminology and forensic psychology (Terry et al. 2004, 8-9).

2002 – 2004 – The following report was commissioned by the National Review Board and paid for by the USCCB: *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950-2002.*

2006 – 2010 –The second report is called, *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010.* This report was largely funded by the USCCB. However, there were other financial contributions from Catholic bodies, and the National Institute of Justice (Terry 2017).

In summation, the Catholic Church in the USA has been working to combat child sexual abuse in the Church for decades and processes that were put in place in the Catholic Church over these years, taken as a whole evidently have been effective. That said, some processes, notably psychological treatment processes, were not effective and there have been other problematic issues relating to child-safety, e.g. in relation to its causes. These are discussed below.

2.9. Offender treatment in the USA

One measure that was introduced by the Catholic Church to combat child sexual abuse was offender treatment programs. However, as mentioned previously, the effectiveness of the treatment programs for treating child sex offenders is somewhat contentious. According to the John Jay Inquiry many priests who were the subject of an allegation of child sexual abuse were put into offender treatment programs (37% in total). In total, 1,624 priests received treatment for sexually abusing children between 1950 and 2002. There were, in total 3,041 instances of treatment – given that many of the priests received more than one form of treatment (Terry et al. 2011, 80). The John Jay researchers claim that the availability of psychological and professional counselling helped to combat child sexual abuse, especially for the group of abusers who only abused many years after ordination in times of job stress and social isolation (Terry et al. 2011, 44)[2].

In the article, *The Mark of Cain: Reintegrating Pedophiles,* Rossetti (1995) claims that of the 300 priests treated at the St. Luke Institute for child sexual abuse, only 2 relapsed. Rossetti argues that clerical offenders generally commit fewer acts of child sexual abuse against fewer victims and do not display the common features of recidivist offenders, e.g. low IQ, lack of insight, choice

[2] However, it was also argued in the Inquiry that this response on the part of the Church was clearly inadequate. Notably, a priest who was subject to an allegation of child sexual abuse was more likely to receive treatment if he had numerous allegations. Furthermore, it appears that the Church collapsed distinctions between serious and less-serious offences since there was no indication that priests who offended in the most serious categories, e.g. penetrative sex, were more likely to receive treatment than offenders whose offenses were in the less serious categories. (Terry et al. 2004, 6).

of young victims etc. (9-18). Fones et al. (1999) claim that treatment had been effective for the 19 clerics who took part in the Program for Professionals sex offender treatment program and who they monitored for one to six years after treatment. It was claimed that most of the participants in the study successfully returned to work as priests and their compulsive sexual urges subsided. It is also claimed that none of the clerics in this study relapsed (25).

Given these findings and correlated findings in other research it has been argued by health professionals that some priests who have abused children should be allowed back into restricted ministry after receiving treatment. For instance, most of the offences in the Catholic Church were not committed by paedophiles but rather by men with an interest in older boys. While paedophilia is hard, if not impossible, to successfully treat – especially if offenders do not want to change – it has been argued that there are many cases of offenders who have committed a single offence, respond to some treatment or other, and do not re-offend. That said, the whole area of treatment of those who engage in child sexual abuse, whether they are paedophiles or not, is highly contentious within the Catholic Church. Certainly, the Church has been misled by researchers and health-care professionals in the past and, for that matter, in the present. For instance, despite the assurances of treatment facilities that offenders were at low-risk of re-offending, this was not always the case and bishops became much less likely to endorse the view that treatment was successful in preventing offenders from re-offending (Terry et al. 2011, 80). Not surprisingly, today bishops are resistant to the idea that offenders can be returned to ministry. Certainly, many of these claims should be treated with scepticism. For instance, can we trust the self-reporting of a sex offender that he or she did not re-offend?

2.10. Confusing policies

The John Jay Inquiry noted that bishops and diocesan leaders were confused by church processes for handling priests who were the subject of allegations of child sexual abuse. Moreover, formal options such as laicization, or dismissal from the clerical state were complicated and time-consuming. Therefore, these options were rarely used (Terry et al. 2004, 4). Furthermore, there was a somewhat idiosyncratic approach to child sexual abuse strategies. More often than not the success or failure of these policies was dependent on the particular bishop who was in charge of the diocese. However, according to the John Jay researchers, the response of bishops in the USA to the problem of child sexual abuse was, generally speaking, pro-active.

> Some diocesan leaders were "innovators" who led the organizational change to address the problems of sexual abuse of minors. However, some were also "laggards," or were slow to respond to organizational changes. The media often focused on the laggards, even though they constituted a minority of diocesan leaders, which further perpetuated the image that the bishops as a whole were not responding (Terry et al. 2011, 119).

2.11. Other concerns

A further criticism of the John Jay Inquiry was that the Church in the USA was overly secretive regarding complaint handling processes. This led victim's groups to call for more transparency in these processes (Terry et al. 2011, 119). Indeed, many of the recommendations of the John Jay Inquiry relate to issues of transparency. Other recommendations concern culture, or in their words, changing 'routines'. These ideas are not mutually exclusive.

That said, many of the recommendations made in the John Jay reports were partly implemented at the time that the reports went to print and continue to be implemented. For example, the Catholic Church in the USA created the Dallas Charter in 2002 in order to make church processes relating to child sexual abuse public. The John Jay Inquiry also commended the Church for commissioning the John Jay studies to learn about the problem and to design audit programs (Terry et al. 2011, 122). One interesting recommendation of the John Jay Inquiry concerns educating the public on the scale of child sexual abuse. For instance,

> Because cases of sexual abuse of minors continue to be reported and the community does not fully understand the temporal distribution of sexual abuse incidents over the last sixty years, it appears to some that sexual abuse is still at peak levels. This lag in understanding will require continued education of the community about these issues and about the Church's commitment to respond to such reports (Terry et al. 2011, 121-22).

2.12. Celibacy

The question of whether or not mandatory celibacy[3] is a cause of child sexual abuse was a constant theme in inquiries addressing child sexual abuse in the Catholic Church. Mandatory celibacy is, of course, a requirement of priests and the professed religious in the Roman Catholic Church.[4] The members of the Expert Group from the Ferns Inquiry (2005) came to the unanimous decision that mandatory celibacy contributed to child sexual abuse (36). The members of the Australian Inquiry were also unanimous in their decision that celibacy was a cause of child sexual abuse. By contrast, the John Jay Inquiry did not accept that celibacy was a cause of child sexual abuse. The following quote outlines the position of the John Jay Inquiry:

[3] It is necessary to point out that the term 'enforced celibacy', that is often used in inquiries relating to child sexual abuse in the Catholic Church, is a misnomer; priests are not forced to be celibate. On the contrary, priests agree to live celibate lives in accordance with Church teaching. This is distinct from enforced celibacy that occurs as a result of imprisonment.

[4] The only exception being Catholic priests who were previously Anglican priests and who were married before becoming Catholic priests. I also note, that Catholic priests are allowed to marry, in some circumstances, in the Catholic orthodox traditions that are not of interest to this study.

> Given the continuous requirement of priestly celibacy over time, it is not clear why the commitment to or state of celibate chastity should be seen as a cause for the steady rise in incidence of sexual abuse between 1950 and 1980. Andrew Greeley makes the same argument, joining it to the obvious statistical observation that the vast majority of incidents of sexual abuse of children are committed by men who are not celibates (Terry et al. 2011, 35).

Indeed, the statistical findings suggest that mandatory celibacy is a *direct* cause of child sexual abuse in only very few cases (Sipe 2014). However, there is evidence to suggest that celibacy can be an *indirect* cause of child sexual abuse. Certainly, celibacy is a direct cause of many psychological problems which are, in turn, correlated with child sexual abuse, e.g. drug and alcohol addiction (Sipe 2014).

That said, there have been many advances in the Church in terms of preparing priests for a healthy celibate life. As far as training is concerned, the John Jay researchers argue that the development of the curriculum, 'Human Formation' was a dramatic improvement on this front. For instance, it is argued that Human Formation better prepared seminarians to live a celibate life. Moreover, it is argued that this training is successful in terms of reducing child sexual abuse in the Catholic Church. For example, it is claimed that priests who were accused of child sexual abuse were less likely to have participated in Human Formation training than priests who were not accused of child sexual abuse. Human Formation was generally introduced into seminaries in the 80s. However, the John Jay Inquiry made a particular note of the developments in Human Formation in 2005. Not only did this curriculum provide better training for men wishing to live a celibate life. It also taught students the theology of living a celibate life. Furthermore, students are expected to have experienced at least two years of celibacy before entering the program.

Of particular interest here, the Human Formation program seeks to discover if candidates for the priesthood have been guilty of abusing children or have a sexual inclination to children. If it is discovered that they do, then, the candidates are disqualified from entering the priesthood. Furthermore, the program seeks to discover other potentially high-risk factors such as, for example, whether the candidate has been sexually abused as a child. Here we note, that people who have been sexually abused themselves are at a higher rate of abusing others if they have not worked through their experiences. That said, being the victim of sexual abuse does not necessarily disqualify a person from entering into a formation program. Nevertheless, it would seem prudent from the perspective of child safety to ensure that these candidates have integrated their experiences in a healthy way – as well as being in the interests of the candidates themselves. Moreover, there is extensive training in Human Formation regarding child sexual abuse (Terry et al. 2011, 46).

2.13. Miscellaneous points

2.13.1. Definitions of child sexual abuse

Generally, the inquiries into child sexual abuse in the Catholic Church – including the ones studied in this book – use very broad definitions of child sexual

abuse. For this reason, their definitions are often inconsistent with legal ones – which tend to be much narrower.

The John Jay Inquiry defines child sexual abuse in the following way:

> As per the Charter, sexual abuse includes contacts or interactions between a child and an adult when the child is being used as an object of sexual gratification for the adult. A child is abused whether or not this activity involves explicit force, whether or not it involves genital or physical contact, whether or not it is initiated by the child, and whether or not there is discernible harmful outcome (Terry et al. 2004, 22).

The salient point to be noted here is that the John Jay Inquiry and the other inquiries define a child as someone who is under 18 years of age. However, the legal age of consent in most countries, including the US, Ireland and Australia is typically lower, e.g. 16 years of age. Therefore, many lawful sexual acts, such as those between a 16-year-old and an 18-year-old would be acts of child sexual abuse according to this definition. Indeed, in some instances, a person cannot be charged with statutory rape of a child who is under the age of consent if the two parties involved are close in age. This is termed the close-in-age exemption. At the time of writing, the age of consent in the USA varies from 16-18. However, in most states the age of consent is 16 years of age (30 states) (Age of Consent n.d.).

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 (Australian Government 2020). 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 interest, children need to be afforded the protection of the criminal law. However, the age of consent varies greatly across jurisdictions world-wide, e.g. 14 years old in Germany (Age of Consent n.d.). 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 the criminal law. However, what of a 17-year-old? Here there is uncertainty and, therefore, uncertainty as to what the law ought to be.

However, a further complication arises given that most of the acts of child sexual abuse in these inquires concern acts that are male-on-male. Homosexuality was illegal in the countries of interest during the peak periods of these alleged incidents of child sexual abuse (1960s and 1970s). Furthermore, despite arguments to the contrary (i.e. that they are instances of situational sex), these acts would have been considered homosexual acts as far as the law was concerned. The decriminalisation of homosexuality occurred at different times

across different states of the USA. For instance, homosexuality was decriminalised in 1962 in Illinois and as late as 2003 in Texas and Florida et al. In most states homosexuality in the USA was decriminalised in the 70s (Eskridge 2008).

Naturally, an act of child sexual abuse can occur even if the child involved is capable of giving consent. For instance, the child might not have in fact consented to the act. Furthermore, a child's ability to provide consent might be impaired for some reasons, such as in the case of sexual acts in which there is a significant power imbalance. Indeed, in more recent times, many jurisdictions, including in the USA, have introduced laws that prosecute people in a position of authority who engage in sexual acts with adolescents over the age of consent but who are under the care of the person in authority. However, in the USA these laws vary from state to state. Indeed, not all states consider it an offense for a person in authority to have sex with a person above the age of consent who is under the person in authority's care; although they do consider it to be an aggravating factor. Furthermore, some states require there to be evidence of coercion in these cases (Terry et al. 2004, 19).

According to the John Jay Inquiry 6% of the alleged victims were under 7 at the time of the alleged abuse, 16% were between the ages 8-10, 50.9% were between the ages 11-14, and 27.3% were between the ages of 15-17 (Terry et al. 2004, 6). Therefore, it is possible that some or many of the alleged acts that involved children in the latter category were not unlawful at the time of the alleged offence, supposing they in fact took place, and were not instances of child sexual abuse according to prevailing laws. That said, many of the inquiries into child sexual abuse do not consider the legal status of the acts to be relevant. For instance, the IICSA claims that changing social mores do not mitigate the alleged offender's actions or the Church's response to these allegations. For instance,

> The evidence summarised includes allegedly 'consensual' sexual activity, and in some cases 'relationships' that developed between a vulnerable child and an adult in a position of authority. It is axiomatic that although the changes in awareness and approach over the years may impact on what might be expected of institutions in terms of preventive or protective measures, they do not exempt those entrusted with the care of children from failures to protect children and young people from sexual abuse and harm (IICSA 2018, 16).

That said, laws and social mores change over time and differ from place to place. As mentioned earlier, laws regarding the age of consent have changed over time and currently differ from place to place. Let us take the case of abortion laws in the USA to demonstrate the dangers attendant upon retrospective judgements and punishments. At the end of the nineteenth century abortion was a statutory crime in all states of the USA. Yet, in 1973, the Supreme Court decision in Roe vs Wade decriminalised abortion in all states of the USA; albeit there are still some criminal sanctions concerning abortion, e.g. if the abortion is performed by an unregistered provider (Buell 1991). Notwithstanding this, some states in the USA have trigger laws which will again criminalize abortion if the ruling of

Roe vs Wade is overturned in the Supreme Court as many supporters of abortion now fear will happen. The proposed penalty, in the Louisianan trigger law, for involvement in abortion, is up to two years imprisonment or a fine of up to $100,000 (Louisiana State Legislature n.d.). Hence, it will potentially be considered a serious crime.

In the case of abortion, as with child sexual abuse, considerable harm is done to the primary victim, i.e. in the case of abortion a foetus is destroyed. Moreover, in the case of, at least, some cases of abortion, e.g. increased choice for women in respect of mid-term abortions, as with some cases of child sexual abuse such as those involving sexual acts between adults and consenting 16-17-year-olds, there is, for many people, moral ambiguity. Let us now imagine that abortion reverts to being illegal in states/countries where abortion is currently legal and, in many cases, argued to be morally acceptable. In light of these hypothetical changes in the law, would it be morally acceptable to retrospectively penalize a woman who had a legal abortion? Surely, most reasonable people would say, no; because the changing laws and social mores mitigate the action. The same argument can be applied to cases of child sexual abuse that were legal at the time of the alleged abuse.

However, the quote from the IICSA not only mentions changing social mores it argues that despite changing mores protective measures should have been in place regardless. Yet, can we reasonably expect the Catholic Church to be held to such a high standard given that these protective measures were not required by legislators or, more generally, understood to be necessary by legislators or the broader community?

2.13.2. Delayed reporting

Most of the allegations of child sexual abuse that came within the scope of the John Jay Inquiry involved a significant delay in reporting the offence. The John Jay researchers claim that child sexual abuse is often reported after a delay in time (Terry et al. 2004, 84). Regarding the allegations in the John Jay Inquiry 44.4% were made in the period 2000-2002 and 39.4% of the allegations were made in the 1990s (0.5% were made in the 50's; 1.8% in the 60's; 2.6% in the 70's; 11.2% in the 80's) (Terry et al. 2004, 90). This is despite the fact that 75% of the alleged acts of child sexual abuse allegedly took place in the period 1960-1984 (Terry et al. 2004, 27). Or in other words, only one in four allegations were made within ten years of when the offence was alleged to have occurred. Half of the allegations were made ten to thirty years after the offence allegedly occurred. 25% of the allegations were made 30 years after the offence was alleged to have occurred (Terry et al. 2004, 94). It is widely accepted that there are numerous reasons for delayed reporting of child sexual abuse. However, a matter which is not discussed widely concerns the problems with delayed reporting. We discuss many of these problems in Section 3.8. later in this book. Here we note a particular concern that was raised by the John Jay researchers.

> In the mid-1990s, as awareness in dioceses was growing, priests who had allegations of abuse many years earlier in their files were sent for assessment and/ or treatment. In such cases, many years had passed since the abuse occurred. Such men were often returned to ministry. However, when subsequent allegations were made about the priest – again going back many years and prior to the treatment – the dioceses were often blamed for allowing a "recidivist" priest to continue in service. Therefore, the timeline of events in many sexual abuse cases became obscured because of reporting delays (Terry et al. 2011, 87).

Hence, it would be unreasonable to expect the Catholic Church to respond to an act of child sexual abuse at the time it was perpetrated if it did not know about it because it was not reported until decades later.

2.14. Compensation

Unlike Ireland and Australia, the USA does not have a national redress scheme that is facilitated by the government or by the Church. Instead, there are different approaches across the different states of the USA. For instance, in California six dioceses have joined together to participate in a joint compensation scheme. These schemes have been established, in some cases, only relatively recently. For instance, the New York fund was first set up in 2016. Many of these schemes were created with the lifting, in some states of the USA, of the statutes of limitations in relation to the crime of child sexual abuse. There were also projections that the Church would have to pay $4 billion US dollars in upcoming compensation cases (Associated Press 2019).

Yet, the Survivors Network of those Abused by Priests (SNAP), the most prominent North American survivor lobby/advocate group, have encouraged complainants not to access compensation schemes but rather to bring their cases to the courts, in a decision that has been met with some suspicion (CBS 2019). For instance, criticism of SNAP emerged in the lawsuit filed by previous SNAP employee Gretchen Hammond. Hammond alleged that SNAP exploits victims of child sexual abuse by treating them solely as potential litigants who might financially boost SNAP and who might financially benefit lawyers who are intimately connected to SNAP (Circuit Court of Cook County 2017). The benefit to SNAP comes through donations from victims of child sexual abuse who have received payments from the Catholic Church and through donations from attorney's who are referred cases from SNAP. Indeed, it is claimed in the lawsuit that SNAP, in contravention of its tax-exempt status, is in fact, a commercial operation that is said to be «motivated by its directors' and officers' personal and ideological animus against the Catholic Church» (Circuit Court of Cook Count 2017).

More generally, survivor advocate/ lobby groups around the world have, quite rightly, aggressively pursued the Church on the behalf of legitimate claims and, in many instances, the victims/survivors of child sexual abuse they have supported have been the recipients of substantial payouts. For instance, the

Archdiocese of Los Angeles paid $774 million to 508 victims of child sexual abuse in a settlement to avoid 15 civil court proceedings (Mozingo and Spano 2007). However, at other times, survivor lobby groups have also aggressively pursued claims that are not legitimate. For example, according to some commentators, witness J who brought a false claim of child sexual abuse against Cardinal George Pell was manipulated by the survivor/victim lobby group, Broken Rites (Friel n.d.b).

2.15. Conclusion

In conclusion, the John Jay researchers gathered data from a survey in which 98% of diocesan priests and 80% of religious priests in the USA participated (Terry et al. 2004, 3). Based on the information contained in this survey the John Jay Inquiry produced two reports. The data from the surveys showed that there were 4,392 priests who had been the subject of an allegation of child sexual abuse in the period 1950-2002. While these are, for the most part, untested allegations, we can nevertheless conclude that child sexual abuse was a significant, yet historical, problem in the Catholic Church. For instance, 75% of alleged instances of child sexual abuse allegedly took place between 1960 and 1984 (Terry et al. 2004, 27). Moreover, the report also claims that more abuse occurred in the seventies than in any other decade, and that allegations of abuse alleged to have taken place in recent years are relatively few in number. Therefore, we can conclude, as the John Jay researchers concluded, that the problem is essentially an historical one. The total number of allegations against priests over this period is 10,667. Of note, the overwhelming percentage of allegations were of male-to-male child sexual abuse. However, only 2% of the priests could be classified as paedophiles. These above findings are in contrast to media reports of child sexual abuse which claim that large numbers of *currently* serving priests are *paedophiles*.

The John Jay Report concluded that there were many factors that would reasonably be assumed to contribute to the decline of child sexual abuse including the enactment of government laws etc. Moreover, it is clear that measures introduced by the Catholic Church in response to the problem were, in large part, effective. These included training programs and child safety mechanisms. On the other hand, there were multiple failures, including referring repeat offenders to ineffective treatment programs. That said, failures of the Catholic Church to respond in a timely manner were due at least in part to delayed reporting of acts of child sexual abuse; allegations of child sexual abuse often came in decades after the alleged event took place. Two issues of concern in this inquiry, and indeed all of the inquiries addressed in this book, are the definition of a child as under the age of 18 and the very broad definitions of child sexual abuse used. We note, that these definitions are often contrary to legal definitions.

However, notwithstanding some of the shortcomings of the John Jay Inquiry this inquiry must be commended for its contextual approach and its focus on the causes of child sexual abuse in the Catholic Church in addition to the

scope of the problem. Studies of child sexual abuse have benefited greatly from the John Jay Inquiry due, in large part, to the analytical detail in its two reports. For example, the John Jay Inquiry grouped allegations of child sexual abuse into 20 categories according to the seriousness of the allegations. Furthermore, the John Jay Inquiry made novel and workable recommendations based on the experience of the researchers in the criminal justice arena, e.g. there are recommendations on how to reduce the opportunity for predators to offend.

CHAPTER 3

The Royal Commission into Institutional Responses to Child Sexual Abuse (Australia)

3.1. Introduction

This chapter provides an analysis of the findings of the Australian *Royal Commission into Institutional Responses to Child Sexual Abuse* (the Australian Inquiry), as far as they relate to the Catholic Church in Australia. In the course of providing this analysis, as with the other inquiries, we discuss the extent of the alleged offences, the historical nature of the alleged offences, the nature of the offences alleged, the profiles of the offenders that emerged, and the Catholic Church's response to the problem of child sexual abuse in its institutions. However, we also discuss some of the shortcomings of the Australian Inquiry, e.g. its investigative processes. Since a good deal of the media reporting of the Australian Inquiry has been inaccurate or misleading, we also offer a corrective to such media accounts.

We conclude that child sexual abuse was a serious and widespread problem in the Catholic Church in Australia. However, the 'crisis' of child sexual abuse in the Catholic Church in Australia is, in large part, an historical problem. For most of the claims of child sexual abuse referred to acts that allegedly occurred in the seventies or earlier and the quantum of allegations of more recent acts of child sexual abuse in the Catholic Church is 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.

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3.2. Private sessions

The Australian Inquiry first heard stories of child sexual abuse in what it called «private sessions». 6,875 persons came forward and gave accounts of child sexual abuse in private sessions up until 31 May 2017. The allegations concerned a wide variety of Australian institutions, both religious and non-religious. Of these, 2,489 claimants alleged that they were the victim of child sexual abuse in a Catholic institution. This number is 61.8% of all claimants who made allegations about a church entity in the private sessions (RCIRCSA 2017, Vol. 16, Book 1, 34). (We note, it would be expected that the Catholic Church would feature so prominently due to the large number of Catholic-run institutions historically, and hence at times prior to widespread reforms regarding child sexual abuse). 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, these claims were not substantiated. A decision was made by then Attorney General, Mark Dreyfus, that the Royal Commission Act 1902 (Cth) would be amended so that large numbers of people could tell their stories to the Australian Inquiry without cross-examination. This amendment to the Royal Commission Act 1902 (Cth) freed the Australian Inquiry from the task of investigating claims of child sexual abuse or cross-examining people who made such claims (RCIRCSA 2017, Vol. 1, 26). The following quote from the Australian Inquiry's final report outlines the exact nature of the amendment that was made to the Royal Commission Act 1902 (Cth).

> The Royal Commission 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 [Australian Government 2018, 60C (2)] and that a person who appears at a private session is not a witness before the Royal Commission or considered to be giving evidence [Australian Government 2018, 60C (1)]. 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 (RCIRCSA 2017, Vol. 1, 26).

A problem with this decision occurred because the Australian Inquiry created quantitative data from the private sessions and reported the data without stressing that the data consisted of unsubstantiated and untested claims. Accordingly, the impression created was that these unsubstantiated claims were true claims, despite the risk of false claims existing in the data. The decision of Commissioners in the Australian Inquiry to use all of the allegations of child sexual abuse in the quantitative data is indicated below.

> When we discuss quantitative information from private sessions in this volume, we use the term 'survivor' to refer both to survivors and victims who attended a private session and those (including deceased victims) whose experiences were described to us by family, friends, whistleblowers and others. This quantitative information is drawn from the experiences of 6,875 victims and survivors of child sexual abuse in institutions, as told to us in private sessions to 31 May 2017 (RCIRCSA 2017, Vol. 1, 73).

Note, the number 6,875 refers to all people who gave accounts of child sexual abuse in private sessions up until 31 May 2017. (Of these, 2,489 claimants alleged that they were abused in the Catholic Church). It must be acknowledged that the Australian Inquiry 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, or had been punished for making such claims, or had been treated with derision when making such claims. The Australian Inquiry did not want to re-traumatize these people by doubting the veracity of their claims (RCIRCSA 2017, Vol. 1, 26). However, as stated previously, the implication of this use of the term 'survivor' is that all of the claims are true claims.

It is reasonable to hear unsubstantiated stories of child sexual abuse in the initial phase of an inquiry as a filtering process, or as a process that leads on to targeted investigations that test claims. However, notwithstanding this, it is problematic that the Australian Inquiry did not adequately qualify the nature of the claims that were made in the private sessions. As mentioned, these claimants were called 'survivors' which is misleading. The quantitative material that followed on from these claims is also misleading as it likely contains some false claims alongside legitimate claims. That some of these stories were highly likely to be false irrespective of the denotation 'survivor' is illustrated by claims that Fiona Barnett made to the Australian Inquiry. Fiona Barnett claims 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[1]. She has no corroborating evidence for these claims and the police have declared the claims baseless. As mentioned in the previous chapter, the US focussed John Jay Inquiry, by contrast, did not use, what it called, «implausible claims» in its data (Terry et al. 2004, 17).

The problems with unsubstantiated claims of child sexual abuse will be discussed below.

3.3. Unsubstantiated claims

Before commencing the discussion on the Australian Inquiry itself we will briefly discuss the McMartin's preschool trial to demonstrate that large scale investigations can contain multiple false claims. The McMartin's preschool trial took place over six years in the late eighties. The McMartin family were subject to hundreds of allegations of child sexual abuse, in what was in 1990, the longest and most expensive criminal trial in the history of the USA. However, there were no convictions from this trial. A pertinent element of this trial is the high number of intentionally false claims that were made by the preschool witnesses. Some of children who accused day-care workers and others of sexually abusing them later admitted to lying about this. In other cases, the allegations

[1] For a full discussion of the Fiona Barnett case, please see: Barry 2018.

were proven to be untrue. For instance, some children claimed that they had been abused in tunnels underneath the day-care centre – the day-care centre was demolished and earthmoving equipment dug out the space where the building used to stand; there were no tunnels to be found. This case led to a number of books being written about what has now been deemed, the 'day-care witch-hunt'. In a counter to the witch-hunt narrative that emerged, Ross Cheit (2014), himself a victim of child sexual abuse, wrote a book analysing the events that led to the McMartin trial. He agreed that many of the allegations were false; in fact, he accepted that approximately 350 allegations were false. However, he argued that 12 of the allegations against one person were potentially true, notwithstanding that the court had deemed them to be false. He also suggests that the premise of a witch-hunt concerning child sexual abuse may not be warranted given the high number of proven cases of child sexual abuse in current inquiries into child sexual abuse. Regardless of whether or not there was a witch-hunt, the US justice system deemed that most of the allegations in this instance, against multiple people, were false. This case, from nearly 30 years ago, should serve as a lesson to those who uncritically accept allegations of child sexual abuse, including those occupying positions on high profile commissions of inquiry.

The Australian Inquiry stated to *the Australian* newspaper, «But for a few witnesses, the evidence of individuals has not been challenged before the Australian Inquiry» (Guilliatt 2017). The Australian Inquiry stated, as mentioned above, that they did not cross-examine witnesses in the private sessions because there was a concern that victims of child sexual abuse would be re-traumatized by the process. That said, the Australian Inquiry's decision not to substantiate the claims of the claimants is a cause of concern to many legal professionals – in particular, the 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 its 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 (Guilliatt 2017).

Evidently, the Australian Inquiry has undervalued the need to safeguard against false claims, especially given the serious consequences of false claims and the historical record of reported instances of false claims of child sexual abuse. False claims are a real and serious problem. The seriousness of making false claims is reflected in the maximum penalty given to people who make such claims and are themselves prosecuted. For instance, in NSW intentionally making a false accusation carries the maximum penalty of seven years im-

prisonment (Australian Government 2020). Note, the maximum sentence for false claims is greater than the maximum sentence for indecent assault which is five years imprisonment.

As stated above, there are serious consequences for people who make intentional false claims such as imprisonment. There are also damaging consequences for people who make false claims that they believe to be true – such as is the case with some instances of so-called recovered repressed memories. For instance, it can be devastating for a person to discover that their claims of recovered repressed memories are false in the tough cross-examination of a court case.

That said, the consequences of false claims are more serious for the people who are the target of the false claims. Some recent examples of false claims of child sexual abuse against priests include the following from Ireland, Spain, Australia and the USA. In 2007, Paul Anderson was imprisoned for three years for falsely claiming that he was raped by a priest in 1981. Anderson admitted to the High Court of Ireland that his claims of child sexual abuse by Fr Tim Hazelwood were false (McGarry 2018). In this case not only did Anderson lie about the abuse, his mother and father both admitted to lying in order to strengthen Anderson's case. Anderson made the allegation, and his parents supported the allegation, in order that Anderson fraudulently receive a compensation payment. Note, this case is one of the allegations that is included in the Cloyne Inquiry under the pseudonym Fr Ricardus. In 2017 a Spanish court declared that David Ramirez Castillo's accusations of child sexual abuse levelled at Fr Roman Martinez were false and implausible (Minder 2017). In Chicago (2017) «John J. Doe» was taped on a gaol phone planning how he was going to «play [the] role» of a victim of child sexual abuse in order to defraud the Diocese of Chicago – albeit the target of John Doe's allegations is a proven child sex offender (Michael O'Loughlin 2017). Furthermore, some cases of child sexual abuse and the handling of cases of child sexual abuse are ambiguous. For instance, in Australia Archbishop Philip Wilson was initially given a custodial sentence for covering-up crimes of child sexual abuse by a magistrate judge. However, the appeals court judge overturned this verdict and remarked that he could not even determine if the crime took place (McCarthy 2018).

Recently, as we discuss in Section 3.12, Cardinal George Pell, one of the highest-ranking clerics in the Catholic Church, was found by the High Court to be not guilty of child sexual abuse calling into question the competence of juries and judges alike to make evidence-based adjudications in relation to child sexual abuse allegations made against members of the Catholic Church. There are many more examples.

Evidently, the Australian Inquiry failed to provide adequate safeguards against the possibility of false claims. This is especially problematic considering the Australian Judiciary have made reforms regarding judicial evidence in historical cases of child sexual abuse, in light of the recommendations of the Australian Inquiry. Take for instance the following recommendation from the Australian Inquiry regarding the evidence of a single witness with an uncorroborated claim of an historical act of child sexual abuse.

> Legislation should provide that the judge must not direct, warn or suggest to the jury that it is 'dangerous or unsafe to convict' on the uncorroborated evidence of the complainant or that the uncorroborated evidence of the complainant should be 'scrutinised with great care' (RCIRCSA 2017, Vol. 16, *Recommendations,* 110).

This is particularly salient when we consider that Cardinal George Pell was convicted of child sexual abuse, on the basis of the uncorroborated and false evidence of a single victim. This decision was made by a jury despite the existence of exculpatory evidence. For example, one of the boys who was alleged to have been abused denied that he had been abused on two separate occasions before his death (Brennan 2019). Pell's reason for appealing the guilty verdict was as follows:

> The verdicts are unreasonable and cannot be supported, having regard to the evidence, including unchallenged exculpatory evidence from more than 20 crown witnesses, it was not open to the jury to be satisfied beyond a reasonable doubt on the word of the complainant alone (The Guardian 2019).

A related issue is that of mistaken identity. As mentioned in the commentary on the Murphy Inquiry there were cases of mistaken identity in the representative sample group, including Fr Giraldus (confirmed case of mistaken identity) and Fr Ignatio (probable case of mistaken identity).

3.3.1. Types of false 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 claims. The name of the act is the *Vexatious Proceedings Act 2008* (Supreme Court of NSW n.d.).

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 Australian Inquiry about the Catholic Church are of this type. According to the data provided by the Catholic Church and relied on by the Australian Inquiry, 77% of the complaints 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 number of alleged acts of child sexual abuse in the Catholic Church that are claimed to have taken place since the late nineties has been very low and those claimed to have taken place since the mid-eighties is on a sharp downward trajectory (RCIRCSA 2017, Vol. 16, Book 1, 303). This very high figure of 77% 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 suggests that some of the claims of child sexual abuse in the Catholic Church were fraudulently made for the purpose of monetary gain.

The second category of claims are claims that are false but are believed to be true by the person making the claims. Two such examples in this category are claims that are the result of misunderstandings and false 'recovered repressed memories'. The risk of misunderstandings is exacerbated by the very broad definition of child sexual abuse that the Australian Inquiry uses. In some cases, one and the same act can be an act of child sexual abuse or an innocent act depending on the intention of the person performing the act. For instance, if an adult puts a child on his knee for the purpose of sexual gratification, this is child sexual abuse. If an adult puts a child on his knee but not for the purposes of sexual gratification – then this is not an act of child sexual abuse. Clearly, there is room for misunderstandings in these kinds of cases.

The Australian Inquiry 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.

As stated above, in cases like these it is possible that there are some misunderstandings.

As far as recovered repressed memories are concerned it is important to begin our discussion with knowledge of the workings of memory. Consider the following key points concerning memory and the law from The British Psychological Board: (1) Memories are records of people's experiences of events and are not records of the events themselves; (2) Remembering is a constructive process – memory is prone to error and can be influenced by the recall environment; (3) Recall of a single or several highly specific details does not guarantee that a memory is accurate or even that the event remembered actually occurred – the only way to establish the truth of a memory is with independent corroborating evidence; (4) People can sincerely 'remember' events that they have not, in reality, experienced (The British Psychological Society, 2010). Here a good deal depends on what precisely counts as corroborating evidence. However, if a commission of inquiry with a remit and obligation to discover the truth adopts the practice of accepting as true the *untested* memory claims of alleged decades-old instances of child sexual abuse and relies on these untested memory claims in its findings and recommendations then there is a significant problem. The reliability of these findings and, therefore, the acceptability of these recommendations must surely now be called into question.

False 'recovered repressed memories' are of particular importance to this research given the controversy surrounding these types of claims and the Australian Inquiry's reliance on recovered repressed memories. Recovered repressed

memories concern presumed memories that are recollected at a later date, usually through the prompting of family or leading techniques in therapy, including altered states of consciousness. These recollections are often generated through exposure to books, movies, or the media (Loftus and Ketcham 1994). In the eighties and nineties, many claims were made of recovered memories of ritualistic or satanic abuse. The veracity of these claims has been the subject of much discussion, and legal experts warn that these claims need to be assessed with caution.

Indeed, claims of recovered repressed memories have been treated with caution in Australia and abroad for over twenty years (Guilliatt 2017). The following local authorities have warned that memories that are obtained through counselling can be unreliable or false: The Wood Royal Commission into the NSW Police Service (1994,83), and the Royal Australian and New Zealand College of Psychiatrists (1996), 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 (Hunt 1993). In the NSW case, R v Tillott443 (1995) a similar approach was taken in relation to Eye Movement Desensitization and Reprocessing (EMDR), following assessment by the NSW Court of Criminal Appeal that, as a technique it presented similar risks of suggestibility, confabulation, pseudo memory, increased witness confidence, and possible falsity of the recovered memory, as associated with memories allegedly recovered under hypnosis.

International bodies that warn against a reliance of recovered repressed memories include, the American Psychiatric Association (1994), and the American Medical Association's Council for Scientific Affairs (1994), among others. In 1994 the American Psychiatric Association published a statement on recovered memories of sexual abuse in which it made the following points that are generally agreed upon:

> …it is not known how to distinguish, with complete accuracy, memories based on true events from those derived from other sources; it is not known what proportion of adults who report recovered memories of sexual abuse were actually abused; there is no completely accurate way of determining the validity of the claims of remembered abuse in the absence of corroborating information; and clinicians who have not had the training necessary to evaluate and treat patients with a broad range of psychiatric disorders, are at risk of causing harm by providing inadequate care for the patient's psychiatric problems and by increasing the patient's resistance to obtaining and responding to appropriate treatment in the future. (American Medical Association Council on Scientific Affairs 1994).

Despite these legal guidelines the Australian Inquiry decided not to investigate claims of recovered repressed memories. This uncritical acceptance of the veracity of recovered repressed memories has opened the Australian Inquiry to much criticism, as has the Australian Inquiry's involvement with Cathy Ke-

zelman and the Blue Knot Foundation. Kezelman is the president of the Blue Knot Foundation.

Kezelman wrote a book detailing her personal experience of recovered memories of child sexual abuse that she claims she began recalling in her forties. 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 (Kezelman 2010, 246-68). There is no corroborating evidence to support these claims. In the afterword of the book, in a brief comment, Kezelman (2010) states that the actual events may not be identical to her memories and that her memories may be a 'metaphor' for what happened to her (282-3). At no point does Kezelman entertain the thought that these are potentially false memories. Instead, she has written a book alleging that actual people, who are named, tortured and murdered children without being sure if this is actually the case. Indeed, Kezelman's brother, Claude Imhoff, denies these claims and says, «It's not that I don't remember those things, I can categorically state that those events never happened» (Guilliatt 2017). 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 Australian Inquiry. 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 psychologist who assesses abuse claims for the courts has criticised the Australian Inquiry for endorsing the Blue Knot Foundation. Coyle notes that the Blue Knot Foundation is, in large part, staffed by people with no forensic or clinical 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 Australian Inquiry endorsed dubious counselling practices that could potentially harm the very people it was intended to help (Guilliatt 2017).

3.3.2. Instances of false claims in criminal inquiries

It is well-known in criminal justice that large numbers of unsubstantiated complaints typically include false claims. For instance, The *Royal Commission into the New South Wales Police* (1997) warned about false claims. «It clearly is the case, however, that false complaints are made, and sometimes sustained, with consequent serious damage to the complainant, and the person against whom the allegation is made, and their immediate family members» (83). Unfortunately, more research needs to be done in this area and we do not have a clear indication of what percentage of allegations of child sexual abuse are false in the com-

missions of inquiry currently being discussed. However, it is helpful to consider studies into false claims made by children in various large-scale investigations.

Studies into false claims of child sexual abuse made by children suggest that 2%-35% of claims of child sexual abuse are false. The discrepancy between 2% and 35% in these studies calls for some discussion. Faller (1991), Jones and McGraw (1987) suggest that 6-8% of claims of child sexual abuse are false. Ceci and Bruck (1995) claim that this figure is too low and misleading. It is argued that Faller, Jones and McGraw's figures relied solely on false claims that arise from intentional lying. By contrast, Poole and Lindsay's study included false claims that arose from intentional lying and that were the product of leading questioning techniques, i.e. questions that imply the correctness of a particular answer or otherwise direct the person being questioned towards the questioner's favoured answer. Poole and Lindsay (1997) suggest that the number is more likely to be 25-35%. Note, this area of research is contentious. However, these figures suggest that caution must be used when evaluating claims of child sexual abuse from children particularly if leading questioning techniques have been involved. This research does not necessarily translate well to adults making historical claims of child sexual abuse. Yet, it does suggest that leading questioning techniques, including in relation to recovered repressed memories, could bring forth false claims.

In concluding this section, it is important to note that in the past there was a prevailing attitude that children lie about being the victims of child sexual abuse. There are numerous accounts of this in the Australian Inquiry'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 now seems that the pendulum has swung too far in the opposite direction; the current tendency is to believe or, at least, encourage the belief that children and, in the cases of most interest to us here, adults, never lie about acts of child sexual abuse. For instance, the Premier of Victoria, Daniel Andrews, in his response to the High Court's decision in relation to Cardinal Pell, stated «I make no comment about today's High Court decision. But I have a message for every single victim and survivor of child sexual abuse. I see you. I hear you. I believe you» (Powell 2020), thereby indirectly questioning, in effect, the veridicality of the decision. After all, if the judgement of the High Court was correct then the accuser should *not* be believed since the evidence weighed, and in fact weighed heavily against his accusation being true (see Section 3.12. below). This tendency to believe those who accuse others of child sexual abuse, *irrespective of the weight of the evidence*, needs to be resisted since it is unjust to the accused and potentially extremely harmful to institutions.

In this section we have argued that the methods used by the Australian Inquiry in the private sessions were flawed. However, just to be clear. In doing so we are not denying the veracity of many claims of child sexual abuse or that such claims have evidential value (whether made by children or by adults). However, we do deny that an allegation of child sexual abuse is in and of itself necessarily true. In the following section we argue that the methods used to interrogate

and draw inferences from the Catholic Church's own records of child sexual abuse were also flawed.

3.4. Claims from the Catholic Church

After the Australian Inquiry heard from claimants in the private sessions it narrowed its focus to particular institutions. The Catholic Church was one such institution. 2,489 claimants in the private sessions (61.8% of all claimants who made allegations about a church entity in these sessions (RCIRCSA 2017, Vol. 16, Book 1, 34)) claimed that they had been abused by a priest or church-worker in the Catholic Church. Therefore, the Catholic Church was an institution of interest to the Australian Inquiry. In order to discover the extent of child sexual abuse in the Catholic Church, the Australian Inquiry 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 Australian Inquiry it was given to Sphere Company who cleaned and analysed the data (RCIRCSA 2017, Vol. 16, Book 1, 113).

It is from this data analysis that the statistics that were published widely in the media arose. It is now generally reported in the media that 7% of all Catholic priests in Australia have been the subject of an allegation of child sexual abuse. This figure has been widely reported in Australian and abroad. The *Daily Mail* 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» (Johnson 2017). *La Repubblica* (2017), the popular Italian newspaper ran the headline, «Australia, paradiso degli orchi. Dal 1950 il 7% dei preti accusati di pedofilia». This translates to read, «Australia, a paradise of orcs. Since 1950 7% of priests are accused paedophiles». Orcs are characters in Jr Tolkien's works who 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. (Here we note that the Catholic Church has, in the past, been overly concerned with its reputation, often at the expense of protecting children from abuse. However, it is unreasonable to expect the Catholic Church to divest itself of all concern for its reputation in response to this criticism). We might also conclude, from the headline in *La Repubblica,* that the reputation of Australians in general have been tarnished. Yet, this figure warrants scrutiny. It is the highest figure among international inquiries who addressed the same question. For instance, the figure in the John Jay Report of the total number of priests with allegations of child sexual abuse from 1950-2002 in the USA was 4% (Terry et. al 2011, 8). The Netherlands report puts the number at 1.7% (Kaufman and Erooga 2016, 49) and Silvano Tomasi (2009), the Holy See's representative to the United Nations, claims the figure is between 1%- 5%.

Before we discuss the problems with the weighted methodology used by the Australian Inquiry it is important to reiterate that an allegation is not necessarily a factual claim and that the figure of 7% includes priests over a 60 years peri-

od. This last point is important because safeguarding mechanisms that were put in place in the Catholic Church in the mid-nineties have proven to be effective given that the number of current serving priests who have contemporary allegations of child sexual abuse is very low (the exact figures are given in section 3.4.1.). The impression from the media reports is that 7% of currently serving priests are predators. Accordingly, many media reports are grossly misleading. Moreover, the claim that these priests who engaged in child sexual abuse were all paedophiles is false. As we saw in the discussion of the John Jay Inquiry (section 2.3.) a paedophile is someone who compulsively engages in sexual actions with pre-pubescent children and not, for instance, 17-year-old boys opportunistically. In fact, only a tiny fraction of acts of child sexual abuse perpetrated by priests were the actions of paedophiles – 2 % of claims in the John Jay Report (Terry et al. 2011, 54).

3.4.1. The weighted methodology

To re-iterate, it is not true, as the media often reports, that 7% of currently serving priests in the Catholic Church have had allegations of child sexual abuse levelled against them[2]. It is also not true that 7% of priests over a sixty-year period have had allegations of child sexual abuse levelled against them. To begin with, the 7% figure is not an actual numerical fact but is instead the product of a weighted methodology that has included most Catholic priests over a sixty year period (RCIRCSA 2017, Vol. 16, Book 1, 296). Furthermore, the 7% 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 attributes weighted values to priests, (i.e. a priest who has been in ministry for many years may be weighted as two priests) (RCIRCSA 2017a, 246). The figure is likely inflated as evidence suggests that many offenders in the Church do not offend in the early years of their ministry (Terry et al. 2011, 3). For instance, in the John Jay Inquiry the average age of a priest at the time of the first alleged incident of child sexual abuse is 39 years of age. Moreover, the average age has consistently increased over time. In the 1950's the average age was 38 in the 1990s the age was 47 (Terry et al.2004, 44). Note, priests who ministered for less than two years have been removed from the Australian Inquiry's analysis.

Moreover, as mentioned above, the figure of 7% 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 Commission's practice in cases in which the identity of the alleged offender is unclear; if the identity is unclear it was assumed the person was not one of the already identified offenders. The following quote from the findings of the Australian Inquiry explains this decision, «A conservative approach was used to group these records. It was considered more reasonable to have duplicates of

[2] As far as we can ascertain from the data that we have to work with.

the same alleged perpetrator than to incorrectly merge records pertaining to different individuals» (RCIRCSA 2017a, 227). It is worth noting here that many of the allegations were lacking in precise detail. For instance, there are allegations that do not include the gender of the alleged offender because the complainants could not determine the gender of the person who allegedly abused them. There are many allegations without precise dates and names etc. As far as the data from the Catholic Church is concerned there were 1,880 alleged perpetrators. In 530 cases the identity of the alleged offender was unknown. If these cases are duplicated that would help to explain why the alleged perpetrator number is so high. When the weighted methodology was not used the figure was 5.6% (RCIRCSA 2017, Vol. 16, Book 1, 296). However, this number still does not include priests who were in ministry for less than two years, includes duplicate numbers of priests, and presumably includes child on child cases of abuse (RCIRCSA 2017a, 15).

Furthermore, the 7% figure or the 5.6% figure includes all claims of child sexual abuse against Catholic priests, including claims that have not been investigated.

This decision has been outlined in the following quote,

> 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 (RCIRCSA 2017, Vol. 16, Book 1, 293).

This quote may surprise or even shock some people. For instance, it may be seen as unfair that the Australian Inquiry was interested in allegations that the Catholic Church did not accept (rightly or wrongly). However, given it was the prime interest of the Australian Inquiry to investigate complaints handling it was important to request all complaints. That said, there are statistical problems when this approach is taken – i.e. the above-mentioned inflated numbers of priests who are presented as having credible allegations of child sexual abuse.

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 (RCIRCSA 2017, Vol. 16, Book 2, 321). For instance, there was no outline of a standard of proof in the 1996 version of the Catholic Church's national redress scheme, *Towards Healing*. Bishop Robinson told the Australian Inquiry that the standard applied by the assessors was that of «moral certainty», which was «less than that of beyond reasonable doubt» (RCIRCSA 2017, Vol. 16, Book 2, 314). Peter Gray SC, a lawyer representing the Catholic Church, told the Commission in 2015 that church groups did not intend to question claimants about details of their allegations or their recollections; even if somebody from a church group had a different recollection (Guilliatt 2017). Thereby, it is likely that a num-

ber of claims for redress were paid to people making false claims. For instance, the *Melbourne Response,* a redress scheme that was established in Melbourne in 1996 by Cardinal George Pell did provide redress to 84% of claims, which is a strikingly high number (RCIRCSA 2017a, 33). It is also worth noting that the Melbourne Response's decision to make a payment or offer of compensation was not an admission of legal liability (RCIRCSA 2017, Vol. 16, Book 2, 321).

More importantly, the 7% figure does not reflect the current situation in the Catholic Church in Australia. During the period 2000-2010 less than ten Catholic priests in total were the subject of a first allegation of child sexual abuse[3]. (A first allegation concerns an alleged offence that began in the designated decade and does not include cases of ongoing abuse that began in the previous decade and continued into the designated period. Of all the reported contemporary cases only 5%[4] of allegations concern cases that lasted for a decade or more, most allegations (60%) occurred in a single year[5]. Notwithstanding this, if we were to include the allegations of priests from the previous decade, that is the 90's, there would only be an additional 20 priests (approximately) to include in the figure) (RCIRCSA 2017a, 22-23). For the period commencing in 2010 this number has dropped to less than five. During the period 2000-2010 0.1% of Catholic priests were the subject of a first allegation of child sexual abuse. Generally, from 1990 through to today there are very low numbers of first reported cases of child sexual abuse. Among those who are reported, the majority of the alleged offenders are lay people and not priests (RCIRCSA 2017a, 22).

Further, there are other difficulties with the data survey used by the Australian Inquiry (and created by Sphere Company). Notably, the data survey does not inquire into the seriousness of events. Moreover, the Australian Inquiry defines a child as under the age of 18. 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 will be discussed in further detail below.

3.4.2. Seriousness of offences

As mentioned previously, there is no way to differentiate the claims of child sexual abuse that were provided to the Australian Inquiry with respect to their degree of seriousness, e.g. between child sexual abuse involving penile penetration and touching a child over their clothing. The Australian Inquiry has a very broad definition of child sexual abuse, yet the survey instrument used by the Australian Inquiry does not inquire about the nature of the alleged acts of child sexual abuse. For instance, «No details were sought about the precise na-

[3] A first allegation of abuse signifies that the abuse started at this time. Abuse that began prior to 2000 and that continued into 2000 is not counted in this number.

[4] This figure is 3 for the non-ordained religious and 2 for lay people (RCIRCSA 2017a, 22-23).

[5] This figure is 50 for the non-ordained religious and 72 for lay people (RCIRCSA 2017a, 22-23).

ture of the alleged acts of child sexual abuse that were the subject of a claim» (RCIRCSA 2017a, 4). Claims of serious child sexual abuse are given equal weight as claims of child sexual abuse that are less serious. In short, the Australian Inquiry'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. As discussed comprehensively in our analysis of the Irish and John Jay inquires, acts of child sexual abuse that are included in the broad definitions used by these inquiries vary tremendously. For example, at one end of the spectrum of complaints there is an allegation of violent gang rape and at the other end of the spectrum there is an allegation which concerns a nun looking in a suspicious manner at a child bathing.

In contrast to the Australian Inquiry, both the Irish Inquiry and the John Jay Inquiry categorise the allegations of child sexual abuse according to the seriousness of the allegations. The John Jay Inquiry separated the allegations of child sexual abuse into 20 different categories. It is worth noting that in this review there were few priests who were at the least serious end of the scale. For example, only 2.9% of the priests are accused of verbal abuse or using child pornography exclusively – i.e. without committing these offences in combination with other offences. Only 9% of the priests committed offenses involving touching over the clothes only i.e. they did not commit a more severe offense than this. 15.8% of priests committed touching under the clothing and this was their most serious offence, i.e. they did not perform any penetrative sexual acts, including kissing and genital sex. We might conclude that the allegations in the Australian Inquiry were similar. However, without this detail it is difficult to get an overall picture of the nature and extent of child sexual abuse in Australia. This is not an unreasonable expectation from the Australian Inquiry given it had a budget of half a billion dollars (AUD). The John Jay Inquiry, by contrast, managed to collate these figures with a budget of a few million dollars (USD).

Furthermore, the Irish Inquiry and the John Jay Inquiry make a distinction between a person who has been the subject of a single allegation (29% of allegations in the John Jay Inquiry (Terry et al. 2004, 74)) of abuse and those who are known to be repeat offenders. This is significant as there is a high rate of recidivism with paedophile offenders. In the John Jay Inquiry only 2 % of the alleged offenders were claimed to be paedophiles and, as such, at the very serious end of the spectrum and responsible for many of the claims of child sexual abuse (Terry et al. 2011, 54).

In closing this section, we note the complex nature of the impact of child sexual abuse. For instance, there was once a prevailing thought that the overall harm caused by child sexual abuse was directly equivalent to the severity of the act or the repeated nature of the acts. However, there is now considerable research to suggest that less serious forms of child sexual abuse can ultimately have a severe impact on victims of child sexual abuse. This is particularly evident if the person in question was already abused in his or her home environment. However, collapsing the distinctions between all forms of child sexual abuse is not helpful here

for a variety of reasons and is not fair to a person who has been accused of child sexual abuse. For instance, did the accused make a suggestive remark in the presence of a sexually mature late teen or did the accused rape a five-year-old child?

3.4.3. Age of consent

The Australian Inquiry defines a child as someone who is less than 18 years old (RCIRCSA 2017a, 215)[6]. 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 Australian Inquiry – the former has perpetrated an act of child sexual abuse (RCIRCSA 2017, Vol. 1, 320, 325). In effect, the Australian Inquiry has decided to deem 18 to be the age of consent, at least for its purposes. Yet, 18 is not the age of consent in Australia. 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 Australian Inquiry's decision to define a child as someone under 18 years of age. At any rate, here we simply note that the Australian Inquiry'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 Australian Inquiry, 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. 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? What if the youth in question is a 'fresh-faced' adult? For instance, the IICSA implicitly endorses the safeguarding actions of Ampleforth school who ultimately referred RC-F95 to the police because of his preference for pornographic websites that depict 'fresh faced' 18-24-year-old men.

> His computer was seized by NYP [North Yorkshire Police]. Forensic examinations were conducted which showed that RCF95 had 'attempted to access adult homosexual sites, but not those involving children'. There was no

[6] The Royal Commission's recent preference for the UN's age of majority makes no difference to this definition. (RCIRCSA 2017, Vol. 1, 319).

> evidence that RCF95 had committed a criminal offence. The investigation was therefore closed by police. Following this incident, a further risk assessment was commissioned, which found that RCF95 posed a significant risk. His employment at the school was terminated in 2007. The statutory authorities were informed of this decision and, in an email to Fr Francis Davidson dated 28 June 2007, David Molesworth of North Yorkshire social services acknowledged that "this underlines the commitment to good child protection procedures and practice that has been established at Ampleforth over recent years, and the willingness to take questions outside the community" (IICSA 2018, 60-2).

Unfortunately, the Australian Inquiry does not give us a comprehensive break-down of the ages of the alleged victims of child sexual abuse. We are given an average age – 11.4 years of age for all claimants (RCIRCSA 2017, Vol. 16, Book 1, 310) and a percentage number of alleged victims who were under 13 and who were 13 years or older (60% were under 13, 40% were 13 years or older) (RCIRCSA 2017a, 25). Therefore, we do not know how many of the 40% of alleged victims who were aged from 13 to 18 years 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, e.g. the percentage involving 16- or 17-year-old youths. 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).

A further issue with the age of consent involves male homosexuality. Most of the alleged offences that were reported to the Australian Inquiry were male-on-male. In as far as gender was reported in the data provided by the Catholic Church 90% of alleged offenders are male and 78% of the victims are male (RCIRCSA 2017, Vol. 16, Book 1, 34). This is significant if we consider changes in the laws relating to homosexuality in Australia. It was as late as 1997 that homosexuality was decriminalised in all states of Australia. Therefore, it is possible that in some cases bishops were protecting homosexual priests who had sexual relations with consenting males over the age of sixteen and who would otherwise have been subject to criminal charges for homosexual behaviour.

3.5. Historical nature of child sexual abuse in the Catholic Church in Australia

Research that has been funded by the Australian Inquiry claims that there has been a decline in child sexual abuse over the past 15-20 years, including in the Catholic Church in Australia (Kaufman and Erooga 2016, 51). Most important is the current situation in the Catholic Church in Australia, stated above, i.e. during the period 2000-2010 0.1% of Catholic priests were the subject of a first allegation.

Generally, from 1990 to today there are very low numbers of first reported cases of child sexual abuse. Among those who are reported, the majority of

the offenders are lay people, not priests (RCIRCSA 2017a, 22). Of the claims in the private sessions that related to religious institutions 90% of the claims concerned allegations of child sexual abuse that are alleged to have occurred before 1990, and 5.8% of the claims concerned allegations that are alleged to have occurred post 1990. 4.2% of the claims did not include a date (RCIRC-SA 2017, Vol. 16, Book 1, 17). As far as the Catholic Church data is concerned 86% of the claims concerned alleged child sexual abuse that commenced in the period from 1950 to 1989 inclusive. Moreover, 29% of first allegations of sexual abuse concern alleged abuse that began in the 70s. (Note, according to the dates that were reported, over 53% of the allegations of abuse occurred over a single year. In 13% of claims the abuse occurred over a period of 5 years) (RCIRCSA 2017a, 13).

In Chapter Two we discussed claims in the US context that suggest that child sexual abuse in the Catholic Church in the United States peaked in the 1960s and 1970s, at least in part because of the social and cultural context of the time (Terry et al. 2011, 2). We also discussed reasons why child sexual abuse decreased in the USA, including an increased awareness of the harm of child sexual abuse and the introduction of government laws (Terry et al. 2011, 3). The decline in the number 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 (RCIRCSA 2017a, 9). 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[7]. Since it was established there have been two independent reviews in 1999-2000 and 2008-09 (Catholic Archdiocese of Sydney n.d.).

3.6. Measures the Church has taken

The following timeline indicates important dates and periods in relation to (alleged) incidents of child sexual abuse and the responses of the Catholic Church in Australia in respect of the introduction of child safety measures.

[7] Note, the mandate to report crimes of child sexual abuse was made in 2010.

1988
- The Australian Catholic Bishop's Conference (ACBC) formally discussed the issue of child sexual abuse in the Catholic Church.
- Church leaders began to coordinate their responses to victims of child sexual abuse and to perpetrators of child sexual abuse.
- The Special Issues Committee was created to address the problem of child sexual abuse.

1989
- The ACBC drafted a series of protocols that recommended a nationally consistent approach to child sexual abuse (RCIRCSA 2017, Vol. 16, Book 2, 299).

1992
- Brian Lucas visited the United States and Canada and reported back to the ACBC Special Issues Committee advising that offending priests should not be returned to active ministry.

1993
- Fr Usher informed the Special Issues Sub-Committee of overseas developments concerning the possibility of paedophiles returning to work (RCIRCSA 2017, Vol. 16, Book 2, 377).

He claimed that any prognosis for 'a cure' for people who admit to acts of sexual misconduct in relation to children and young people is remote. Overseas and local clinical experience indicated that the possibility of any offender returning to fill active ministry is unlikely. Arrangements whereby such offenders returned to some form of 'special ministry' in the Church under supervision was a possibility and there were models of such arrangements in the process of development in Canada and the United States of America (RCIRCSA 2017, Vol. 16, Book 2, 378).

The mid- 1990s
- A general understanding emerged amongst church leaders that alleged perpetrators of child sexual abuse could not be kept in ministry where they had contact with children.
- Preventative strategies were put in place (RCIRCSA 2017, Vol. 16, Book 2, 316).
- Priests were put on administrative leave while a compliant was being assessed (RCIRCSA 2017, Vol. 16, Book 2, 315).
- Priests were sent for psychological assessment and therapy after receiving a complaint (RCIRCSA 2017, Vol. 16, Book 2, 372). Here the psychologist was/is a mandatory reporter.

1996
- The *Melbourne Response*, a local redress scheme, was 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 was established (RCIRCSA 2017, Vol. 16, Book 2, 300).

The following is a quote from the findings of the Australian Inquiry that outlines the processes of *Towards Healing*.

> When a complaint of sexual abuse against Catholic Church personnel came to the attention of a member of the Catholic Church, the matter was to be referred to a contact person. The contact person was to provide a written report to the appropriate Catholic Church authority and to make a recommendation concerning whether a formal assessment of the matter was required. If the complaint raised issues of a criminal nature, the contact person was to tell the complainant of their right to take the matter to the police and provide assistance to do so, if desired. If an assessment was considered to be required, the Catholic Church authority was to appoint two independent assessors from a list kept by the relevant resource group. Towards Healing (1996) set out the process to be followed by the assessors, who could recommend to the Catholic Church authority that the 'accused' person be asked to stand aside from a particular office or from all offices held in the Catholic Church. Once the assessment process was completed, the assessors were to provide a written report with recommendations to the Catholic Church authority (RCIRCSA 2017, Vol. 16, Book 2, 315).

- The Church sent offending priests to *Encompass* – a residential treatment program for sex offenders (1997-2008) (RCIRCSA 2017a, 10).

1999

- Since 1997 the Catholic Church in Australia worked to improve the processes in *Towards Healing*.
- The National Committee for Professional Standards engaged 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 came into effect (RCIRCSA 2017, Vol. 16, Book 2, 447).

2018

- The ACBC and Catholic Religious Australia (CRA) released their response to the Australian Inquiry (2018). The ACBC claimed that they accepted 98% of the Australian Inquiry's recommendations and noted that many of the recommendations had already been implemented or were in the process of being implemented. The Truth Justice Healing Council (the official body in the Catholic Church that liaised with the Australian Inquiry) released a four-volume response to the Australian Inquiry. Vol. 1. Where from and where to: The Truth Justice Healing Council, the Royal Commission and the Catholic

Church in Australia. Vol. 2. The Royal Commission's recommendations, and responses from the Truth, Justice, Healing Council. Vol. 3. What we have done: an activity report from the Truth Justice Healing Council 2013-2018. Vol. 4 Emerging Themes: A snapshot of approaches taken by Church authorities in Australia to formation, governance, legal and policy issues (2016).

2020

- The ACBC and CRA release «The Light from the Southern Cross. Promoting Co-Responsible Governance in the Catholic Church in Australia». This document responds to recommendations made by the Royal Commission concerning governance.

3.7. Police

The Catholic Church in Australia has been criticised for not reporting crimes of child sexual abuse to the police. The prevailing view in the Church was that victims of child sexual abuse should decide whether or not to report instances of abuse to the police. This view was also evident in Australia and is expressed in the following quote from Fr Lucas in his evidence to the Australian Inquiry. «The question of informing the police was taken for granted as a matter for the victim, except in circumstances where the mandatory reporting provisions applied» (RCIRCSA 2017, Vol. 16, Book 2, 356). This approach is not too different from the approach taken by the Australian Inquiry itself which is outlined in the following quote. «If we received information relating to a potential contravention of Australian law, we made referrals to police in cases where the alleged perpetrator could have been alive and the survivor wished us to report the matter. There were many cases where the alleged perpetrator was either known to be, or was almost certainly, deceased. If there was a prospective risk to any child a referral was made irrespective of the wish of the survivor» (RCIRCSA 2017, Vol. 1, 25).

Both of these approaches, as outlined above, accord with the law. It is helpful here to cite, as the Australian Inquiry does, the relevant part of the act that currently concerns mandatory reporting of child sexual abuse, notably section 316(1) of the Crimes Act 1900 (NSW).

> (1)If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.

In 1998 the law was amended. From this date clerics can be prosecuted without the approval of the Attorney-General if they conceal a serious indictable offence. However, it must also be noted that this act is controversial (RCIRCSA 2017, Vol. 16, Book 2, 357). At present the Law Reform Commission are calling

for section 1 of this act to be abolished because it can have consequences that might be regarded as unfair. For instance, if a victim of historical child sexual abuse discloses the crime to family members and the family members do not report the crime to the police, then the family members have committed this offence (Law Reform Commission n.d.). Other states have similar laws including the Victorian Crimes Act 1958 – section 327. This section states:

> …a person of or over the age of 18 years (whether in Victoria of elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a member of the police force of Victoria as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so. Penalty: 3 years imprisonment.

However, a person is excused from reporting the offence on a number of grounds including if the victim does not want the incident to be disclosed. This is in keeping with the decision expressed above by Fr Lucas and the Australian Inquiry.

The following section relates to the policy of reporting child sexual abuse in the Catholic Church as it appears in *Towards Healing.* This document outlines the procedures to be followed if there is a complaint of child sexual abuse in the Catholic Church. This document is operational in all dioceses of Australia except for the Melbourne Diocese which utilizes the procedures as they are set out in the *Melbourne Response* (The Truth Justice Healing Council n.d.). In the 1996 version of *Towards Healing* a person who made a claim of child sexual abuse was advised of his or her right to report the incident to the police and assistance was provided to the complainant if this was the decision that he or she made. The complainant was asked to sign a written report if he or she decided not to report the incident to the police. Furthermore, the 1996 version of *Towards Healing* required that state and territory law regarding the reporting of knowledge of criminal offences must be observed. In the 2010 version of *Towards Healing* it is stated that church personnel should pass the details of the complaint to the Director of Professional Standards, who in turn should pass the information to the police regardless of whether or not the complainant wants to report the incident to the police (RCIRCSA 2017, Vol. 16, Book 2, 361).

In summation it is important to mention that there was a prevailing attitude in the Church in Australia, as there was in Ireland (discussed in Chapter One), that if the victim did not want to report the crime to the police then it would be intrusive for the Church to do so on the complainant's behalf. As previously mentioned in Chapter One, the problem with this position is that, potentially offenders are not dealt with and children, including the complainant if he or she is a child, are put at risk. Moreover, evidence is not compiled regarding offenders. Furthermore, although the policy states that cases of child sexual abuse should be reported to the police, in reality many were not reported to the police when they should have been. However, many more allegations of child sexual abuse were not even known to the Church before the Australian Inquiry.

3.8. Delayed reports of child sexual abuse

The findings of the Australian Inquiry show that there was a peak in incidents of child sexual abuse in the 1960s and the 1970s followed by a sharp decline in the mid-1980s. While these figures are based on allegations, they are consistent with the figures arrived at by 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 after the alleged incident of abuse (RCIRCSA 2017, Vol. 16, Book 1, 302). Of the allegations in the private sessions that related to religious institutions 90% concern incidents of child sexual abuse that allegedly occurred before 1990, and 5.8% of the allegations concern incidents that allegedly occurred post 1990. 4.2% of the allegations did not include the date of the alleged incident (RCIRCSA 2017, Vol. 16, Book 1, 17). Consider this quote from the chair of the Australian Inquiry, Justice McClellan (2017b), «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».

This has led the Australian Inquiry to claim that the current situation in the Catholic Church, regarding child sexual abuse, is likely to reflect the high numbers in the 70s, despite very low reported allegations of contemporary incidents of child sexual abuse. The Australian Inquiry claims that it is likely that there are a large number of unreported incidents of currently occurring child sexual abuse that will be reported 30 years from now – given the average delay in reporting of past incidents. However, this claim is questionable. We note that if the delay is typically 30 years then the number of complaints in relation to incidents alleged to have taken place circa 1990 would be very high at this time i.e. circa 2020; but they are not high, they are actually very low.

Many reasons are given for the delay in reporting alleged offences. The reasons offered for the 30-year delay include the following ones. Some victims of child sexual abuse did not feel confident reporting offences at the time of the offence; But does that confidence spontaneously emerge after 30 year or has the climate changed? e.g. as a result of the Australian Inquiry, in which case we would expect the delay to be greatly reduced. In the case of recovered repressed memories, the claimants did not remember that they had been abused; But why would a person recover these memories after 30 years rather than, say, 20 years? Still others came forward because of the opportunity afforded by the Australian Inquiry. If so, we would expect many more allegations of recent incidents of child sexual abuse than the Commission's explanation of the 30-year delay can admit.

As the Australian Inquiry suggests, it is *possible* that the figures of current incidents of child sexual abuse – as well as, of course, the allegations of child sexual abuse on which these figures 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 number for the 1960s and 1970s. (Here the corresponding number needs to take into account, and proportion accordingly, the relative numbers of priests in the differ-

ent time periods). For one thing, as things stand and as just stated, the number of incidents of child sexual abuse that allegedly took place since the 2000s is much lower proportionally than the corresponding number for the 1960s and 1970s. Accordingly, there is a presumption in favour of the proposition that the actual rates of child sexual abuse in the Catholic Church sharply declined over this period. The Australian Inquiry has not shown otherwise, but has merely offered a contestable speculation which is in any case, as we saw above, not credible. For another thing, in relation to the early 1960s to late 1980s period, there was a noticeable drop in the offences alleged to have taken place in the 1980s – some 30 years ago. Furthermore, 86% of the claims of child sexual abuse pertained to acts that allegedly commenced or occurred in 1950-1989 inclusive. The highest number of first-alleged incidents of child sexual abuse by a priest occurred in the 1970s (of the Catholic Church data (29% of claims with known dates) (RCIRCSA 2017, Vol. 16, Book 1, 34). Moreover, given that 77% of all claims of child sexual abuse were made after the creation of a redress scheme, it would seem that the redress scheme has encouraged people to make claims.

As we mention in section 3.8, research that has been funded by the Australian Inquiry claims that there has been a decline in child sexual abuse over the past 15-20 years, including in the Church in Australia (Kaufman and Erooga 2016, 51). 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.

3.9. Lay offenders in the Catholic Church

One of the lesser-known findings of the Australian Inquiry is that not all of the offenders in the Catholic Church are priests. In the private sessions pertaining to the Catholic Church and Catholic run institutions 53.1% of the claimants alleged that a lay person sexually abused them. These lay persons included teachers, residential care workers, housemasters, volunteers, ancillary staff and foster carers serving in Catholic churches or Catholic institutions (RCIRCSA 2017, Vol. 16, Book 1, 334). In the Catholic Church data the numbers of alleged offenders are as follows: 37% were non-ordained religious brothers or sisters, 30% were priests and 29% were lay people (RCIRCSA 2017, Vol. 16, Book 1, 35). Of the alleged perpetrators 543 were lay people (or 29 per cent) with a further 72 (or 4%) whose religious status was unknown (RCIRCSA 2017a, 15). These figures are not only significant 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 Australian Inquiry. It is also worth noting that some of the alleged lay offenders were likely to be chil-

dren themselves (RCIRCSA 2017a, 216). For instance, an incident might involve a 15-year-old youth worker and another youth.

Of the total number of claimants in the private sessions 13.4% alleged that they had been abused by another child (RCIRCSA 2017, Vol. 16, Book 1, 34). 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 involve issues of maturity and power imbalance not necessarily present in the former (Goldstein and Weiner 2007, 438). Further to this point, there is a disparity between the Australian Inquiry's definition of a perpetrator and the people who have been included in this category. For example, in the section of the final report that lists key terms it clearly states that a perpetrator is «an adult who has sexually abused a child» (RCIRCSA 2017, Vol. 16, Book 1, 130). Yet, as just stated, 13.4% of the claims in the private sessions concerned child-on-child sexual abuse.

3.10. Seal of confession

The Sacrament of Confession was an area of interest to the Australian Inquiry. In the private sessions, and in other hearings, the Commissioners heard stories of child sexual abuse that concerned the confessional. The stories that they heard, fell into three different categories: (1) Crimes of child sexual abuse that are alleged to have occurred in the confessional; (2) Grooming that is alleged to have occurred in the confessional; (3) Perpetrators who confessed to child sexual abuse in the confessional; and, (4) Allegations of child sexual abuse that were allegedly disclosed in the confessional.

The Australian Inquiry made numerous recommendations concerning the seal of confession both to the Catholic Church and the Australian Government. The Australian Inquiry argued that civil law may compel a priest to reveal information received in the confession, and hence break the seal of confession in a number of ways: (1) Through a mandatory reporting regime; (2) Through reportable conduct schemes, which report to the Ombudsman or a similar body; (3) The laws of evidence in relation to civil or criminal proceedings, and; (4) Laws relating to the disclosure to police of a crime or suspected crime.

The Church has generally argued that the Government's legislation that requires priests to break the seal of confession infringes human rights. Fr Frank Brennan commented that the confessional should be viewed not unlike legal professional privilege. A letter that the ACBC wrote to Australian Capital Territory Chief Minister Andrew Barr claimed that the laws concerning mandatory reporting and the sacrament of confession impinge on the human right to freedom of religion. However, it has also been argued that freedom to practice religious beliefs in a civil society is not absolute. In article 18 of the International Covenant on Civil and Political Rights it states that religious 'freedoms' can be restricted by law if these beliefs or practices threaten public safety, order, health, or morals or the fundamental rights and freedoms of others. It is claimed that a civil society's obligation to protect children from child sexual abuse accords

with these restrictions. These obligations are in contrast to cases where priests confessed to acts of child sexual abuse in the sacrament of confession, were forgiven, and continued to abuse children (RCIRCSA 2017b, 50-4).

Yet, it has been argued by Archbishop Christopher Prowse (2018) that these cases are not numerous enough, and the evidence given to the priest who hears the confession not robust enough, to warrant regulating for breaking the seal of confession. He claims that removing the seal of confession will have no effect as far as keeping children safe from predators is concerned, given the dramatic decline in the use of the sacrament of confession. Furthermore, as mentioned above, the information that can be extracted in the confessional is limited in its utility. For instance, confessions are anonymous and in many cases priests will have no way of identifying a victim, or of knowing any other significant information such as the date or the event or the location of the event (Brennan 2017). Therefore, the Australian Inquiry cannot establish that their recommendations will have a significant impact as far as child safety is concerned. Moreover, the Australian Inquiry has not demonstrated a concern for preserving the positive attributes of the sacrament.

Other recommendations concerning child-safety and the seal of confession that do not damage the sacrament of confession include, increasing the recommended age of children making confessions, making the process of confessions visible (Frank O'Loughlin 2017), and reserving absolution until the penitent has reported his actions to the police and/or attended counselling, where mandatory reporting would occur (Curtin 2017).

3.11. Redress

The Australian Inquiry recommended that the Australian Government establish a national redress scheme that would pay compensation of up to $150,000 to victims of child sexual abuse over the last sixty years at participating institutions. Participation in the scheme was voluntary (Lansdown 2019, 1). However, the Church was under significant pressure to join including from the then Prime Minister of Australia, Malcolm Turnbull, who made a public address saying the following, «If a Church or a charity or an institution does not sign up, I hope they will be shamed» (Yosufvai 2018). Some churches delayed signing up to the scheme early as there was concern about the details of the scheme. Importantly, church bodies were considering the implications of the very low standard of proof in the redress scheme. The standard of proof was set lower than the balance of probabilities standard used in most civil cases. A significant concern was that insurance companies would not cover payments made at such a low threshold (Shine n.d.). The standard of proof was referred to as «reasonable likelihood» and could be met by a complainant simply alleging that he or she had been sexually abused – a very serious allegation that may well cause the accused to lose both their livelihood and their reputation – without any corroborating evidence or any detailed investigation and in the face of an accuser denying the accusation yet without any right of reply. Consider the following quote from the Australian Government website:

In determining reasonable likelihood, the Operator must also consider that the Scheme was established in recognition that some people:

- have never disclosed their abuse and disclosure to the Scheme may be the first time they have done so.
- would be unable to establish their presence at the institution at the relevant time (the institution's records may have been destroyed, record keeping practices may have been poor, or the survivor may have attended institutional events where no attendance record would have been taken).
- do not have corroborating evidence of the abuse they have suffered (Australian Government n.d.).

The process for redress is as follows: the applicant makes an application online without a face-to-face interview; there are a number of prompts to assist in filling out the application; the application is sent to the relevant diocese (to the 'Safe Church Team') who are given an opportunity to respond with relevant information; the decision regarding payment of the application is then made by independent assessors according to guidelines that have and will not be made public or made available to institutions who have opted-in to the scheme; the independent assessors then make a decision about whether a claim is to be paid and how much is to be paid; and this offer is communicated to the claimant who may accept it and in doing so give up his or her rights to sue the institution (however, the accused may still be sued). The person making the allegation is not bound by confidentiality obligations. Note, the accused will not to be notified of the accusation unless the police choose to investigate or if the Church decides to implement risk management measures in relation to the accused person, e.g. by terminating his or her employment. Whether or not the Church decides to implement risk management measures in relation to accused priests is a fraught issue (Lansdown 2019, 103). The Church is very risk averse at the present time. However, surely it is unreasonable and unfair to terminate a person's employment, or otherwise restrict a person's livelihood, and destroy his reputation, on the basis of a claim that may well be essentially unsubstantiated and to which the accused has no right of reply?

Note, this is very different to the Government's position concerning the response of government agencies to civil claims of child sexual abuse. For instance, the *NSW Government Guiding Principles for Government Agencies Responding to Civil Claims of Child Sexual Abuse* (n.d.) includes the following quote which allows for the possibility of false claims. «The Guiding Principles…do not prevent NSW Government agencies from protecting the proper and legitimate interests of the State, which include legitimate steps to defend claims, including where a claim is vexatious, unmeritorious or an abuse of process».

The Government redress scheme has taken over from the Catholic Church's own redress process, in part, because the Catholic Church in Australia has been accused of not providing sufficient compensation to victims of child sexual abuse. However, let us consider the Archdiocese of Melbourne as a case study. The Archdiocese of Melbourne agreed with the cap of $150,000 as of 1 January

2017 (RCIRCSA 2017, Vol. 16, Book 1, 130). When the Melbourne Response was established, ex gratia payments were capped at $50,000, but steadily increased – $55,000 in 2000 and $75,000 in 2008 (RCIRCSA 2017, Vol. 16, Book 2, 321). In total the Catholic Church paid $268 million in response to claims received between 1 January 1980 – February 2015, i.e. prior to the Australian Inquiry. This figure includes payments made from all redress programs and civil proceedings. The average payment was $88,000. (However, this figure includes payments that were very large, sometimes millions of dollars were awarded to a single person) (RCIRCSA 2017a).

According to the Reserve Bank of Australia's (n.d.) national inflation calculator, the amount of $50,000 in 1996 is equivalent to the amount $84, 932.53 (regarding a 'basket of goods') in 2018. However, this rate of inflation only includes a representational selection of goods and services that are acquired by households (Australian Bureau of Statistics. n.d.). It does not include the price of rent and mortgage increases. Rent increases from 2001-2016 increased by more than 100% (Chalkley-Rhoden 2017). Furthermore, the standard of the burden of proof must be taken into consideration here. We might conclude that this money is not too far from the Australian Inquiry's recommendation that redress be capped at $150,000.

3.12. Case-study Cardinal George Pell

The Australian Inquiry has given substantial impetus to the view that those who complain of child sexual abuse should always be believed. This is evident by its decision to call all complainants of child sexual abuse victims or survivors despite the fact that many of these cases are untested and some are false, e.g. the complaints made against Cardinal George Pell. This view has now made its way into the mainstream media and seems to have influenced members of juries, among others. Consider, for instance, the now notorious case of Cardinal Pell. In this instance, a jury trial and two appeals court judges were apparently so moved by the demeanour of the complainant that they ignored or explained away the many inconsistencies in his testimony and discounted the largely unchallenged exculpatory evidence of 23 witnesses for the defence. For instance, the dissenting justice in the Second Appeals Court, Justice Mark Weinberg (2019), who is considered to be the leading expert in Australia on criminal law, had the following to say in his judgement, «It must be remembered, however, that the complainant's allegations in this case cannot, and must not, be viewed in isolation from his detailed depiction of the circumstances in which such offending is said to have occurred. It cannot legitimately be said that no matter how improbable the complainant's account might be, at least in relation to matters of detail, and no matter how cogent the body of exculpatory evidence led at trial might appear, the complainant's demeanour in the face of sustained cross-examination must invariably trump factors of that kind» (304).

On the contrary, Weinberg (2019) argued the following: «Objectively speaking, this was always going to be a problematic case. The complainant's allega-

tions against the applicant were, to one degree or another, implausible. In the case of the second incident, even that is an understatement» (294). In the present case, there was a significant body of cogent evidence casting serious doubt upon the complainant's account, both as to credibility and reliability (Weinberg 2019, 295).

Below we examine the case in detail. Before doing so it might be helpful to briefly describe the case of Carl Beech and Sir Richard Henriques' (2016) report into the Beech case, *An Independent Review of the Metropolitan Police Service's Handling of Non-Recent Sexual Offence Investigations Alleged against Persons of Public Prominence*. Carl Beech alleged to the police in the UK that he was the victim of an elite paedophile ring in the late 1970s and early 1980s, including MP Harvey Proctor who was profoundly affected by the false allegations. Carl Beech is now in prison for perverting the course of justice. Yet, questions remain about this case, including: why were the police so quick to believe the fantasist Beech? Henriques report into this case identifies the principal cause of many of the failings in the investigation as poor judgement on the part of police and a failure to accurately evaluate facts. A further contributing factor was the prevailing culture according to which 'victims' must be believed. Henriques explicitly warns against describing complainants as victims from the outset of an investigation – this designation is only appropriate after the claims have been tested. To do otherwise is inconsistent with the presumption of innocence that is afforded defendants of accusations (Chapter One).

As Chris S Friel (n.d.a.) remarks, «In truth, as the Beech case showed, there was no shortage of known facts that if evaluated would have revealed the inconsistencies and led to actions that would have exposed the lies (examining Beech's computer, for example). But the culture of "believing victims" acts as a stupor that prevents good judgement. Another way of putting this point is that such belief acts as a dogma which somehow prevents anyone in the group stating the obvious. Both the idea and the word are imprisoned by the "believe the victim" culture. This acts as a barrier to the desire to understand what was really going on».

We also note that the Independent Review by Lord Carlisle (2017) into the case of Bishop George Bell, as distinct from George Pell, highlighted many similar deficiencies in the processes of the Church of England in relation to people who have been accused of child sexual abuse. They are as follows: allegations were not investigated but were rather simply accepted as true without investigation; the harm to innocent persons that would be caused by false accusations was not given significant weight; the Church and commissions of inquiry were both overly concerned with their reputations and ideological commitments; those making allegations were called 'survivors' despite the fact that many of these claims were untested and some, at least, were probably false; neither the Church nor the commissions of inquiry ensured that members who were the subject of an allegation of child sexual abuse received justice; the possibility of false memories were not accorded any weight in the statistical findings; and exculpatory evidence was not considered.

The Pell case has many similarities with the Carl Beech case and the George Bell case, but it also has some important differences. One striking difference concerns the complaints process. In the case of Beech and Bell, investigations began after complaints were made. Regarding the Pell case, the Victorian Police (under Operation Tethering) advertised that they were seeking complaints against George Pell when none had been made. We might not be surprised that complainants came forth in the political/media climate of the time, as discussed in previous chapters. Most of the complainants were deemed to be obviously delusional. The case of witness J, as he is now known, made it to court. Yet, it is surprising that it did so given that even the most basic investigation would have revealed that these allegations were highly implausible, if not impossible. Indeed, in a police interview in 2016 Pell told the police that a rudimentary interview with the many staff and helpers at the Cathedral would prove the allegations to be false. However, the police did not interview many of the exculpatory witnesses in this case; if they had they might have come to the conclusion that the High Court of Australia did nearly four years later.

The seven justices of the High Court of Australia, acting unanimously, in the judgement on this case had the following to say, «The High Court found that the jury, acting rationally on the whole of the evidence, ought to have entertained a doubt as to the applicant's guilt with respect to each of the offences for which he was convicted, and ordered that the convictions be quashed and that verdicts of acquittal be entered in their place» (Keifel et al. 2020, 7).

The details of the allegations against Pell are as follows:

> A [A is the complainant "J"] and B were aged 13 years at the time of these events. A was a soprano. It was his evidence that, following Sunday solemn Mass, he and B had broken away from the procession at a point when it was approaching the metal gate to the toilet corridor. The two of them had slipped away and gone back into the Cathedral through the door to the south transept. The double doors from the south transept to the sacristy corridor were unlocked and they made their way down the corridor to the priests' sacristy, which was unlocked. They went inside and were "poking around". In a cupboard in an alcove they found a bottle of red altar wine. They had barely taken a couple of swigs from the bottle when the applicant appeared in the doorway. He was standing alone in his robes. He challenged them, saying, "[w]hat are you doing in here?" or "[y]ou're in trouble". A and B froze. The applicant undid his trousers and belt and started "moving … underneath his robes". The applicant pulled B aside, took his penis out and lowered B's head towards it. A saw the applicant's hands around the back of B's head. B was crouched before the applicant and his head was down near the applicant's genitals (charge one). B said "[c]an you let us go? We didn't do anything". This assault took place for "barely a minute or two". Next, the applicant turned to A, pushing him down into a crouching position. The applicant was standing and his penis was erect. He pushed his penis into A's mouth. This assault took place over a short period of time that "wouldn't have been any more than 2 minutes" (charge two). The applicant then instructed A to undo A's pants and to take them off. A dropped his pants and underwear and

> the applicant started touching A's penis and testicles (charge three). As he was doing this, the applicant used his other hand to touch his own penis (charge four). The applicant was crouched almost on one knee. These further acts of indecency occupied "a minute or two". A and B made some objections but did not quite yell out. They were sobbing and whimpering. The applicant told them to be quiet, in an attempt to stop them crying. After the applicant stopped, A gathered himself and his clothing. He and B re-joined some of the choir, who were mingling around in the choir room and finishing up for the day. A and B then left the Cathedral precinct. A recalled that they were picked up by his parents or B's parents. He did not complain to anyone, including his parents, about the incident. Nor did he ever discuss the offending with B. At least a month after the first incident, again following Sunday solemn Mass at the Cathedral, A was processing with the choir back along the sacristy corridor towards the Knox Centre (the procession on this occasion was evidently an internal one). After A passed the doors to the priests' sacristy, but before reaching the door to the archbishop's sacristy, the applicant appeared and pushed A against the wall and squeezed his testicles and penis painfully. The applicant was "in his full regalia". The assault was fleeting. A did not say anything nor did he tell B about this second incident (charge five). A was uncertain of the date of each incident. He believed that both had occurred following a Sunday solemn Mass celebrated by the applicant in the second half of 1996, before Christmas. He maintained that the two incidents were separated by at least one month (Keifel et al. 2020, 5-6).

The focus of this case-study concerns the adjudication of the High Court of Australia and its binding decision to have this case acquitted and the crimes quashed. There are further concerns that are not mentioned in this judgement, i.e. that one of the alleged victims who died prior to Pell's trial had earlier denied that the abuse occurred. For a more comprehensive account of this case please see Chris S. Friel's articles on academia.edu.

The High Court claimed that the jury and two of the three appeals court judges did not question whether it was reasonably probable that the alleged crimes took place and, consequently, the jury and these two judges (who constitute the majority in the appeals court decision) failed to arrive at the correct conclusion, namely, that there was reasonable doubt regarding Pell's guilt. Indeed, the High Court justices claim that there is «a significant possibility that an innocent person has been convicted because the evidence did not establish guilt to the requisite standard of proof» (Keifel et al. 2020). The High Court focused on aspects of the unchallenged evidence of the opportunity witnesses which were inconsistent with the complainant's account. They concern the following three obstacles: «(i) the applicant's practice of greeting congregants on or near the Cathedral steps after Sunday solemn Mass; (ii) the established and historical Catholic Church practice that required that the applicant, as an archbishop, always be accompanied when robed in the Cathedral; and (iii) the continuous traffic in and out of the priests' sacristy for ten to 15 minutes after the conclusion of the procession that ended Sunday solemn Mass» (Keifel et al. 2020).

Regarding the first point, it was standard practice at the Cathedral that the members of the Church procession, including the choir and celebrating priests would process out of the Cathedral to their next destinations, i.e. the choristers would process to the priest's sacristy and then move on to the choir room and the priests would process to the priest's sacristy. It was the practice of Pell, who was the last person in the procession, to remain at the door of the Cathedral to meet and greet parishioners, while the rest of the procession continued to the sacristy. Pell would ordinarily remain at the door with his master of ceremonies, Monsignor Portelli, and greet parishioners for between ten to thirty minutes unless he had an engagement to attend after Mass. Importantly, if the complainant's allegations were correct (that Pell abused the two boys before the church procession ended - given they were said to break-away from the procession and reach the final destination (the sacristy) before the rest of the procession did so) then Pell could not have been standing at the door of the Cathedral greeting parishioners (because, Pell, also, would have to break away from the procession to abuse the boys before the procession ended).We note, the Department of Public Prosecutions argued that there was only a window of 5-6 minutes when the alleged offence could have occurred – although, we will later see that even this window of opportunity is highly improbable, if not impossible. However, at this stage let us entertain that it is possible. If it is possible, it still stands that the complainant's case is rendered to be false if Pell is proven to be greeting parishioners at the door of the Cathedral for ten minutes. Ten witnesses gave evidence relating to Pell's practice of greeting parishioners at the door of the Cathedral for at least 10 minutes. McGlone and Portelli have a specific recollection of Pell greeting parishioners at the steps of the Cathedral on the day of the first alleged offence – it was a memorable day given it was Pell's first Mass as Archbishop of Melbourne. If Pell was, indeed, greeting parishioners at the steps of the Cathedral for 10 minutes it is not possible that he committed the offence.

Regarding the second point, it is standard practice for an Archbishop in the Catholic Church to be accompanied by a master of ceremonies at all times when the Archbishop is in a Church. Pell was always accompanied within the Cathedral by his master of ceremonies, Charles Portelli. Four witnesses confirmed that the Archbishop would always unrobe with somebody else present. If Pell was always attended to by his master of ceremonies, as was the practice in the Church, then he could not have committed these offences.

Regarding the third point, the assault could not have occurred because the sacristy was a 'hive of activity' after Mass, when the assault was alleged to have occurred. The altar servers gave evidence that it was the practice of the Cathedral that the door to the priest's sacristy was unlocked by the sacristan when the altar servers reached the door, during the procession, notwithstanding that the procession officially ended when the participants bowed to the crucifix in the sacristy. The door was locked prior to this time, notwithstanding the obstruction to the procession, because valuable items where left unattended in the sacristy, including the priest's bags and belongings. After the door was unlocked the altar servers would complete the procession by bowing to the crucifix in

the sacristy. After this time the altar servers, under directions from the sacristan (Potter) would bring in the silverware and the missals to the priest's sacristy. J's account of the events is that the two boys broke away from the procession and arrived in the sacristy when nobody was there and when the door was open (indeed, J's account requires that two doors that were ordinarily locked be unlocked on this occasion). The majority judges in the Court of Appeal (as opposed to all seven judges in the High Court) concluded that it was reasonable for the jury to arrive at the conclusion that the assaults occurred in the 5-6 minutes of private prayer time that the sacristan allowed the congregation for prayer before the altar servers would clean up after the Mass – hence, supposedly after completing the procession and before cleaning up after the service. Or in other words, before a 'hive of activity' in the priest's sacristy. There are numerous problems with this conclusion: (1) The boys did not cross paths with the 6-12 altar servers; (2) The boys did not cross paths with concelebrating priests who should have gone to the priest's sacristy to unrobe and collect their valuables which were stored in the sacristy; and most problematic of all (3) The 5-6 minutes needed for the 'hiatus theory' simply does not exist. This quote from the High Court judgement presents the problem clearly: «The principal difficulty with the Court of Appeal majority's analysis is that it elides Potter's estimate of five to six minutes of private prayer time with the estimate of five to six minutes during which A and B re-entered the Cathedral, made their way into the priests' sacristy and were assaulted. The two periods are distinct» (Keifel et al. 2020). In other words, it has always been maintained by the prosecution that there was only ever 5-6 minutes that this alleged assault could have taken place. That is because the sacristan said that he allowed the congregation 5-6 minutes of prayer before he began organizing the clean up after Mass. The prosecution took this to mean that there was a 5-6 minute 'hiatus' in an otherwise very busy time at the sacristy after Mass. However, as the High Court judges, correctly, remark, this 5-6-minute period began from the start of the procession, the procession itself took about 5 minutes (or the time needed for A and B to make their way to the sacristy). Therefore, there was no available time for the offence to have occurred.

3.13. Conclusion

The findings of the Australian Inquiry in respect of child sexual abuse in the Catholic Church in Australia are alarming. The quantum of complaints made against Catholic priests and church workers of child sexual abuse is very high, as is the quantum of Catholic priests and church workers complained about. Indeed, it is evidence of, what was, a widespread and serious problem of child sexual abuse in the ranks of the Catholic Church in Australia. However, it is important to note that most of the allegations that were made to the Australian Inquiry were historical claims, i.e. claims in relation to alleged incidents that happened many decades ago. 86% of the claims relate to incidents that allegedly happened in the period 1950-1989 inclusive. Moreover, we have 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.

In the course of the discussion of the processes of the Australian Inquiry we have identified a number of shortcomings, including its use of a methodology which tended to inflate the quantum of complaints, its failure to differentiate between serious and less serious allegations, and its insistence that all those who lodge a complaint, including those who make unsubstantiated, implausible complaints, be regarded as survivors.

However, in closing it is important to stress that notwithstanding the criticisms of this analysis, the Australian Inquiry provided an important platform for victims of child sexual abuse to tell their stories of child sexual abuse and this opportunity and experience proved to be cathartic for them. The resulting momentum in society regarding redress and public apologies proved to be healing for many victims/survivors of child sexual abuse.

CHAPTER 4

Conclusion

It is evident that members of the Catholic Church perpetrated child sexual abuse crimes on a large scale in the 60s, 70s, and early 80s. For instance, inquiries into child sexual abuse have discovered allegations of child sexual abuse in most dioceses of the countries of interest. In data from the John Jay survey instrument sent to all of the Catholic dioceses 4,392 priests had been the subject of an allegation of child sexual abuse in the period 1950-2002 (Terry et al. 2004, 27). Moreover, there is evidence to suggest that the Church covered-up crimes of child sexual abuse and acted unjustly to victims of child sexual abuse.

Regarding the inquiries, all three inquiries performed valuable tasks in so far as they aggregated data on child sexual abuse allegations in the Catholic Church, thereby, demonstrating that child sexual abuse is a serious problem, provided a voice for those who had been sexually abused, and recommended reform measures. Furthermore, the commissions of inquiry raised many valid concerns regarding the Church's handling of complaints of child sexual abuse. For instance, canon law processes were found to be defective in many instances. Many of these concerns have now been addressed or are currently being addressed. Importantly, in 2019 Pope Francis released the letter *Vos Estis Lux Mundi* which issued clear and effective standards for complaints handled, as far as they relate to ordained members, or those within the Catholic Church who are professed religious, including nuns and monks. On 16 July 2020 the CDF released *Vademecum. On Certain Points of Procedure in Treating Cases of Child Sexual Abuse of Minors Committed by Clerics.* This handbook provides church leaders with clear directions regarding complaints handling.

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In the Introduction we stressed that child sexual abuse in the Catholic Church has had horrendous effects on many of its victims and that the Catholic Church must take full responsibility for its many failures in this regard. Nevertheless, there is a need for objective analysis as a corrective to the current media-driven, one-sided characterisation of child sexual abuse in the Catholic Church today, at least in Ireland, the USA and Australia. Contrary to many media reports on the subject, the evidence provided by the three major commissions of inquiry demonstrates that the problem of child sexual abuse in the Catholic Church is essentially an historical problem. Moreover, the evidence suggests that safeguarding mechanisms put in place in the Church, and a general awareness of the pervasiveness of child sexual abuse and the harms it causes, have resulted in a dramatic reduction in the rate of child sexual abuse in the Catholic Church. For instance, the industrial schools which were the subject of the Ryan Report were closed by the mid-1970s and many of the allegations related to events that occurred 40 years prior to the mid-1970s. The major finding of the John Jay Inquiry is that the 'crisis' of child sexual abuse in the Catholic Church is an historical problem. Similarly, the claims in the Australian Inquiry concern allegations of child sexual abuse that were, on average, alleged to have occurred 30 years ago, i.e. 90% of the allegations concerned events that were alleged to have occurred before 1990 (RCIRCSA 2017, Vol. 16, Book 1, 17). Indeed, the John Jay Inquiry recommended that the Catholic Church educate the public regarding the nature and extent of child sexual abuse in the Church today. The John Jay Inquiry claimed that the general public, who rely of the media for their information regarding commissions of inquiry, do not fully understand the temporal distribution of sexual abuse incidents over the last sixty years. It is argued that people who rely on the media for their information on this topic believe that child sexual abuse is still at the peak levels of the 1970s. Yet during the period July 1, 2018 – June 30, 2019 .07% or 37 priests in the USA had a contemporary accusation made against them for abusing a minor and 99.98% of priests did not have a substantiated accusation made against them (Donohue 2020).

The mandates of the Irish, USA and Australian inquiries were different in a number of respects. For instance, the John Jay Inquiry was more interested in analysing the nature and causes of the problem of child sexual abuse in the Catholic Church in the USA, whereas the Irish Inquiry and the Australian Inquiry were more concerned with complaints handling in Ireland and Australia (respectively). Notwithstanding these differences, there were many commonalities in the approaches that these inquiries took in respect of their analyses of complaints and other data, albeit with different degrees of success. In relation to the conclusions reached, again there were both commonalities and differences. In this concluding chapter we outline some of these commonalities and differences.

Regarding the number of resources each had at its disposal and, other things being equal, one might have expected the best resourced of the inquiries to do substantially better than the less well resourced. Accordingly, it might be expected that in terms of the criteria of intellectual depth and utility of findings the John Jay Inquiry would suffer greatly by comparison with the Australian Inqui-

ry, in particular, given that the former generated a report in 2 volumes and cost US$3 million (roughly equivalent to AU$4 million) while the latter generated a report in 16 volumes and cost AU$500 million. However, for reasons to be given below, this is not so; indeed, the John Jay Inquiry is superior to the Australian Inquiry in a number of important respects, notwithstanding the huge resources expended on the latter. The Irish Inquiry cost substantially more than the John Jay Inquiry but less than the Australian Inquiry. Its costs were as follows: Ryan Inquiry (126-136 million euros); Murphy Inquiry (3.6 million euros, not including third party legal costs); Ferns Inquiry (2.3 million euros); and the Cloyne Inquiry (1.9 million euros, not including third party legal costs) (Age of Inquiry n.d.). The Irish Inquiry has been criticised for the cost of the inquiry – a cost it is now asking the Catholic Church to pay half of. The following commentary compares the processes and findings of the inquiries.

4.1. Unsubstantiated claims

A common feature of the three inquiries is the presence of large numbers of unsubstantiated allegations of child sexual abuse. That said, the Australian and Irish inquires (particularly the Ferns Inquiry, Murphy Inquiry and Cloyne Inquiry) claim that the focus of their inquiry is complaints handling and not the veracity of claims. However, notwithstanding this, these inquiries published statistics regarding the number of allegations they received and the percentage numbers of priests who were subjects of allegations of child sexual abuse etc. These figures play a central role in these inquiries. Moreover, notwithstanding what the Commissioners might say, they are intended to play a central role and are provided to the media so that they will, in fact, be widely disseminated and occupy a central place in the minds of the public, policymakers and so on. These figures were often reported in the media without appropriate qualifiers and, thereby, created the impression that large numbers of currently serving priests were guilty of child sexual abuse. This cavalier, indeed misleading, reporting of allegations of child sexual abuse has been extremely and unfairly damaging to the reputation of the Catholic Church and horrendous for those bishops and priests who are, in fact, innocent of the crimes and misdemeanours that they have been accused of. Moreover, it has occurred in spite of persistent warning from academics and lawyers about the possibility, indeed likelihood, of false allegations. For instance, Ross Burnett (2016) recently edited a book published by Oxford University Press, *Wrongful Allegations of Sexual and Child Abuse,* in which it is argued that false claims of child sexual abuse are quite common.

It was only the John Jay Inquiry that excluded what the study called, «an implausible allegation» (Terry et al. 2004, 20). The Australian and Irish inquiries did not exclude implausible allegations from their data; so, their aggregated data includes instances of implausible, indeed presumably false, allegations. The quantum and percentage of false allegations in all three inquires, (albeit especially the Irish and Australian inquiries, given they failed to discard implausible allegations) is unclear. For very large numbers of allegations not only

concerned events alleged to have occurred in the distant past, they were based on recovered repressed memories and lacked corroborating evidence and/or were untested. Therefore, it cannot simply be assumed that the quantum and percentage of false allegations aggregated in the Irish and Australian inquiries (and to a lesser extent the John Jay Inquiry, given it discarded implausible allegations) is very small. Furthermore, the John Jay Inquiry had a clearer process of identifying the targets of allegations of child sexual abuse than the Irish and Australian inquiries. For example, all of the allegations in the John Jay Inquiry were against a person with a name and a birth date, as opposed to the Australian Inquiry's allegations from the private sessions where identities were often unclear, including cases where the gender of the target of the allegation was unknown (Terry et al. 2004, 4).

4.2. Ambiguous language

A further, and related, comparison can be made regarding the language used in the inquiries. The language used in a forensic commission of inquiry is important. However, the Australian and the Irish inquiries struggled with the use of consistent and precise language. For instance, they both failed to consistently use the word «alleged» in reference to unsubstantiated claims. Take for instance, the section in the final report of the Australian Inquiry titled, «Perpetrators of Child Sexual Abuse». This section begins by speaking of alleged perpetrators, and then, moves into calling all alleged perpetrators simply perpetrators (RCIRCSA 2017, Vol. 16, Book 1, 18-19). Similarly, the Irish Inquiry failed to consistently specify the nature of a claim. For instance, «The failure to repeat the phrase "it is alleged" throughout every paragraph of this Chapter must not be taken as indicating that the Inquiry has accepted that the allegations or complaints are, or any of them is, true» (The Ferns Inquiry 2005, 70). However, there are significant differences between an alleged act of child sexual abuse and a substantiated allegation of child sexual abuse. In the case of an alleged or untested allegation of child sexual abuse we cannot be confident that the alleged child sexual abuse happened or that it is an act of child sexual abuse whereas in the case of a substantiated allegation we can.

The Australian Inquiry was often guilty of using inconsistent and confusing language with reference to the people who made allegations of child sexual abuse. For example, the Australian Inquiry decided to call all of the people who made unsubstantiated allegations of child sexual abuse in the private sessions 'survivors'. However, the term 'claimant' is used in the interim report in relation to allegations in the claims data from the Catholic Church and not the term 'survivor' (RCIRCSA 2017a, 6). This inconsistency is misleading as it could reasonably be assumed that if the terms 'survivor' and 'claimant' are both used, as they are, then the term survivor would refer to substantiated complaints and the term claimant would refer to unsubstantiated complaints; however, this is not the case. Unfortunately, this confusing language made its way into media reports without a warning that survivor's claims were unsubstantiated.

Moreover, there is a disparity between the Australian Inquiry's definition of a perpetrator and the people who have been included in this category. For example, in the section of the final report that lists key terms it clearly states that a perpetrator is «an adult who has sexually abused a child» (RCIRCSA 2017, Vol. 16, Book 1, 130). Yet, 13.4% of the claims in the private sessions concerned child on child sexual abuse (RCIRCSA 2017a, 216). Similar problems occurred with the Irish Inquiry. For instance, an Irish Times editorial reported that the Murphy Inquiry had found that, «the vast majority of uninvolved priests turned a blind eye» to child sexual abuse. Yet, the Murphy Report made the following claim, «Some priests were aware that particular instances of abuse had occurred. A few were courageous and brought complaints to the attention of their superiors. The vast majority simply chose to turn a blind eye». Hence, the vast majority of those priests who were aware of the abuse were said to have turned a blind eye, which was a minority of priests. Certainly, the wording that the «vast majority» of «some priests» is poor expression which could easily lead to the misunderstanding outlined above. Padraig McCarthy (n.d.) has the following to say regarding the claim that child sexual abuse was widespread throughout the Diocese of Dublin,

> The report claims (1,7) that abuse of children by priests was "widespread" in the diocese. Diocesan statistics (November 2009) show that 5 per cent of priests between 1940 and 2009 have had allegations made against them. This is 5 per cent too much, but 5 per cent is not "widespread". If 5 per cent of journalists had such allegations against them, and an official report described this as "widespread" abuse, journalists would protest strongly.

That said, child sexual abuse was widespread in as much as it occurred in many parishes and was not limited to a small geographical area. Hence, we also use the description widespread in this commentary. In contrast to both of these inquiries the John Jay Inquiry used consistent and forensically correct language.

4.3. Seriousness of offences

A further difference in the inquires concerned whether or not the inquiry categorised acts of child sexual abuse on the basis of their seriousness. If they did not then, for instance, an allegation of a violent rape counts as one allegation and, therefore, has the same weight in the statistics as a lewd comment. The John Jay Inquiry categorized offenses into 20 categories including the following ones: touching over the victim's clothing; touching under the victim's clothes; cleric performing oral sex; victim disrobed; penile penetration or attempted penile penetration etc (Terry et al. 2004, 6). Similarly, the Irish Inquiries categorized allegations according to the seriousness of the abuse. Categories included: inappropriate fondling and contact; abuser forcing the child to perform masturbation on the abuser; the use of violence; anal rape; masturbation of the child by abuser; oral/genital contact; non-contact sexual abuse; attempted rape; kissing; and digital penetration (CICSA 2009, Vol. 3, 7.117-20). Furthermore, the Irish

Inquiry and the John Jay Inquiry noted that most incidents of sexual abuse involved multiple categories. Hence, the specifics of the offences were considered in detail. By contrast, the Australian Inquiry did not inquire into the nature of an alleged act of abuse. The Australian Inquiry justified this omission by claiming that their work was largely concerned with complaints handling and that, therefore, the nature of the complaints, including the quantum of complaints of serious offences versus that of less serious offences, was not important. However, the response to an allegation of a serious offence, e.g. violent rape of a prepubescent child, would reasonably be expected to be different to the response to an allegation of a much less serious offence, e.g. looking at a postpubescent youth in a shower. Furthermore, the Australian Inquiry released these undifferentiated (with respect to the seriousness of the alleged offences) numerical figures of allegations of child sexual abuse to the media and did so without making it clear that some of these allegations would likely be allegations of child sexual abuse at the less serious end of the scale.

4.4. Male homosexuality

In the following commentary we refer specifically to *male* homosexuality. Evidence in inquiries into child sexual abuse consistently show that child sexual abuse in religious institutions is overwhelmingly committed by men and usually by men who abuse boys. The cases of women in the Church committing acts of child sexual abuse, lesbian or otherwise, are very low. For instance, in the Australian Inquiry 3% of the allegations involved a female only, 2% of the claims involved a male and a female, and 1.2% of the claims concern a religious sister (RCIRCSA 2017, Vol. 16, Book 2, 81). Indeed, it is remarkable that the Australian Inquiry did not spend any time investigating the strikingly low level of child sexual abuse allegations in Catholic women's institutions. Evidently, female-on-female or female-on-male child sexual abuse was not a problem in the Catholic Church notwithstanding the significant number of Catholic institutions staffed by women catering to the needs of girls and boys.

Regarding the figures, in the Ryan Report it is claimed that sexual abuse was endemic in boy's institutions as opposed to girl's schools where sexual abuse was not seen to be systemic (CICSA 2009, Vol. 3, 6.18). Indeed, in the industrial and reformatory schools for girls, girls were more often abused by external male workers or care providers (including family members) than by female care staff who were resident at the schools (CICSA 2009, Vol. 3, 9.94). In the Murphy Report the ratio of abuse to boys was 2.3 times that of the abuse to girls (DACI 2009, 3). Furthermore, the Ferns statistics reveal that four times as many boys as girls were reportedly abused by religious brothers and sisters. In the data provided by the Catholic Church in the Australian Inquiry (or, more precisely, in that data in which the gender of the offender and/or victim was reported, i.e. 96% of the data) 90% of alleged offenders are male and 78% of the victims are male. 96.2% of the alleged offenders are male in the private sessions data and 73.9% of the accusers are male (RCIRCSA 2017, Vol. 16, Book 1, 34). Moreover, many,

if not most, of the stories told to the Australian Inquiry, regarding the Catholic Church, include references to homosexuality. Below are a few select examples[1].

«Perry was open about his homosexuality, and attempted to convince Louis that he was homosexual too» (Anonymous, n.d.a.).

«Richards, however, persisted in trying to convince Neville he was homosexual» (Anonymous n.d.b.).

«At the same time, Winston was trying to come to terms with his emerging homosexuality, in a "hostile and unforgiving environment." Eventually, he accepted it. "I don't know why, but I did. I just thought, "Okay, I'm gay and that's it. I need to deal with it"» (Anonymous n.d.c.).

«On the last occasion I saw him and it was just the two of us and … he said to me, "You just need to embrace the fact that you're gay". And that's what he said to me. And that, I just thought in an odd sort of way was easier for me to accept what had happened if I was, because that of course was normal sexual activity if I was homosexual. So for a number of years I thought, well maybe that's what I am. I didn't act on that but that's sort of how I felt» (Anonymous n.d.d.).

The John Jay Inquiry claimed that, when sex was reported, 81% of the alleged victims were male and 19% of the alleged victims were female (Terry et al. 2004, 69).

However, notwithstanding these striking figures the inquiries did not suggest that male sexuality is an area of interest as far as child sexual abuse is concerned. For instance, the Australian Inquiry is of particular interest here given that it makes the following claim:

> Understanding the diverse motivations and behaviours of adult perpetrators is key to recognising the risk of child sexual abuse, preventing abuse from occurring, and providing treatment to adults who have sexually abused children. This includes understanding the motivations and behaviours of all perpetrators, and not just incarcerated child sex offenders (RCIRCSA 2017, Vol. 2, 127).

Yet, in the next paragraph the Australian Inquiry makes the following comment:

> Given that most adult perpetrators are male, it has been suggested that gender may play a role in influencing who commits child sexual abuse. However, while the overwhelming majority of people who commit child sexual abuse are men, gender is not predictive of whether or not a person will become a perpetrator. Although the majority of adult perpetrators are male, most men do not sexually abuse children (RCIRCSA 2017, Vol. 2, 127).

This argument is fallacious. The fact that the *overwhelming* majority of child sexual abusers are men rather than women is a striking disparity in need of explanation and, prima facie, some feature of male sexuality, or of the sexuality of

[1] Note these examples are unsubstantiated allegations of child sexual abuse taken from the Private Sessions of the Australian Royal Commission.

some men, is part of the explanation. Certainly, this line of inquiry cannot simply be dismissed because most men do not sexually abuse children. To see this, consider the following obviously fallacious, analogous argument in which gender is replaced by age and being a child sexual abuser is replaced by dying from COVID 19. Most persons over 65 years of age do not die of COVID 19, therefore, those aged 65 or over are at no greater risk of dying from COVID 19 than any other age group! There is a striking correlation between gender (specifically the male gender) and being a child sexual abuser as there is between age (specifically being elderly) and dying from COVID 19. This correlation between the male gender and child sexual abuse is in need of explanation not cavalier dismissal.

Moreover, the homosexual nature of many of these acts is important if we are to better understand the impact of the crimes on victims/survivors of child sexual abuse. For instance, many victims/survivors reported that they struggled with their sexuality for many years, or their entire lives, because of the homosexual nature of the abuse. Some complainants said that they believed that they became gay because of the nature of the sexual abuse, some complainants claimed that they became homophobic as a result of the sexual abuse, whilst others claimed that they had remained confused about their sexuality as a result of the alleged offences. Other topics relating to homosexuality that emerged from the private sessions include, among others, the legality of homosexuality at the time of the offence and surrounding issues of consent, and the shame that many complainants felt because of Church teachings about homosexuality and family views of homosexuality. In addition, there is significant research that suggests that offenders who committed acts of child sexual abuse with male children were twice as likely to have suffered childhood sexual abuse themselves when compared with offenders who chose female victims[2]. Furthermore, the homosexual nature of the acts, in some instances, affected the response to the acts. Take, for instance, the following quote from The Bishops' Committee on Child Protection:

> Child sexual abuse by clergy has occurred over an extended period. Therefore, some awareness of the problem must have existed among clergy, most likely senior members of the Church, for some time. However, the way in which inappropriate sexual behaviour was interpreted by senior Church personnel varied. Anecdotally, sexual contact with male children was sometimes understood as homosexual behaviour rather than child sexual abuse per se. The emphasis was on the moral implications for the offending cleric and a confessional approach was used (Goode et al. 2003, 16).

Suffice it to say, these stories suggest that male homosexuality is an area that should have been of significant interest to the Australian Inquiry. Yet it is an is-

[2] «In a meta-analysis of eighteen studies from1965 to1985, Hanson and Slater found that adult sex offenders who had perpetrated offenses against a male child were more likely to have a history of childhood sexual abuse (39 percent) than those who had perpetrated offenses against only female children (18 percent)» (Terry et al. 2011, 95).

sue which the Australian Inquiry dismisses with one small paragraph in the final report (which is composed of 16 volumes).

> Although most of the perpetrators of child sexual abuse in the Catholic Church that we heard about were male adults, and most victims were boys or adolescents, it is a misconception that all perpetrators who sexually abuse children of the same gender as them are same-sex attracted. Research suggests that child sexual abuse is not related to sexual orientation: perpetrators can be straight, gay, lesbian or bisexual. Research has indicated that men who identify as heterosexual are just as likely as men who identify as homosexual to perpetrate child sexual abuse. Vatican documents that link homosexuality to child sexual abuse are not in keeping with current psychological evidence or understanding about healthy human sexuality (RCIRCSA 2017, Vol. 16, Book 1, 43).

Like the Irish Inquiry and the Australian Inquiry, the John Jay Inquiry noted the high rate of male-on-male offenses in the data regarding child sexual abuse in the Catholic Church (in this case in the USA). Thus, in allegations in which the sex of the (alleged) offender and victim were disclosed, 81% of the alleged victims were male (Terry et al. 2004, 69). However, unlike the Irish Inquiry, and the Australian Inquiry, the John Jay Inquiry acknowledged the need to explain these very high rates of male-on-male child sexual abuse, and addressed the issue of homosexuality. In doing so the John Jay Inquiry makes an argument in terms of situational homosexual acts rather than prior sexual orientation. We discussed the weaknesses in this argument in Chapter Two. Suffice it to say here, that criminality is dependent not only on opportunity but on motive and, in the case of sexual crimes, sexual desire is not only an obvious motive but a necessary condition. In short, even if the only opportunities available were opportunities to sexually abuse boys this would not demonstrate that there was no sexual orientation towards boys. In any case, the statistics offered in the John Jay Inquiry to support their theory of situational abuse do not, in fact, support it. Thus, only a small percentage of the victims were altar boys and choir boys (groups to whom priests had access and who were exclusively male, and who the John Jay Inquiry relied on to make good on their claim of situational abuse), and the greater number of victims were first encountered by offending priests in the general Church community, at Mass (Terry et al. 2011, 109).

Therefore, notwithstanding these striking figures, namely, that the perpetrators of child sexual abuse in the Catholic Church are overwhelmingly male and their victims overwhelmingly male, all three inquiries denied that male-to-male sexual orientation/preference should be an issue of concern in relation to the problem of child sexual abuse in the Catholic Church. If, in fact, it is an issue of legitimate concern, as the statistics seem to indicate, then this denial is problematic for two main reasons: (1) These inquiries are fact-finding inquiries and, therefore, they should only communicate the facts uncovered, they should not seek to explain away 'inconvenient' truths, and; (2) These inquiries are making recommendations for child safety in institutions, and their ideological or emotional attachments should not be allowed to prevail at the expense of

child safety. Furthermore, all three inquiries were intensely critical of the view that clerics were considered to be a group of people who were considered to be beyond even justified criticism. It is claimed that this attitude was an obstacle to complaints of child sexual abuse being acknowledged and also contributed to cover-ups in the Church. Fair enough. After all no group of people should be beyond justified criticism as far as child sexual abuse is concerned.

In closing, it seems that the inquiries into child sexual abuse in the Catholic Church are somewhat naïve in respect of the history of paedophile promotion groups and gay activism in the seventies and, as a result, have denied that male-on-male child sexual abuse was in fact a problem and dismissed those who claim it was as blinded by prejudice against homosexuals. Thus, according to IICSA (2019a): «For these reasons, it is important not to conflate samesex orientation and child sexual abuse. Selective blindness is a problem that can arise in any community, religious or otherwise, which is intolerant of homosexual acts and does not openly debate such matters» (94). It is, of course, true that same-sex orientation should not be conflated with child sexual abuse, and also true that homosexuals have been in the past unfairly and significantly discriminated against in the Catholic Church, as elsewhere. However, these truths should not be confused with, or allowed to shut down open debate on, the issue at hand, namely, the statistical preponderance of male-on-male child sexual abuse in the Catholic Church and, for that matter, in other churches. For instance, in the Anglican Church in Australia 94% of the alleged offenders were male (RCIRCSA 2017b, 13) and 75% of alleged victims were male (RCIRCSA 2017, Vol. 16, Book 1, 581). Moreover, the problem of male-on-male child sexual abuse has been acknowledged and acted upon by the Anglican Communion and other churches. For instance, research commissioned by the Professional Standards Commission of the Anglican Church in Australia in 2009 made the following recommendation, «Focus educational efforts on awareness of the risk of abuse of boys» (RCIRCSA 2017, Vol. 16, Book 1, 586).

4.5. Historical problem

Most of the allegations of child sexual abuse quantified in the inquiries into child sexual abuse described and analysed in this book concern events that were alleged to have occurred decades earlier than the time at which the allegations were made. For instance, in the figures from the Confidential Committee in the Ryan Report 90% of the witnesses were first admitted to residential institutions between 1914 and 1965 (CICSA 2009, Vol. 3, 4.05). Most of the allegations of abuse concern events alleged to have occurred in the 60s (CICSA 2009, Vol. 3, 9.09). 47% of the allegations that relate to the males concerned alleged abuse that took place in the 60s. The allegations in the Investigative Committee also related to abuse that, if it occurred, then it occurred in the distant past. Indeed, the industrial schools which were a focus of this inquiry closed by the mid-70s. A substantial number of the allegations concerned alleged abuse that occurred 40 years prior to the closure of the industrial schools (CICSA 2009, Vol. 1, 5.30).

The Murphy, Ferns, and Cloyne inquiries also report the historic nature of the allegations. For instance, the oldest compliant in the Cloyne Inquiry concerns an alleged event from the 1930s.

The John Jay Inquiry reported that incidents of child sexual abuse increased in the 1960s, peaked in 1970s and sharply declined in the 1980s (Terry et al. 2011, 2). Furthermore, the John Jay Inquiry findings were that more abuse occurred in the seventies than in any other decade, and that allegations of abuse that are claimed to have occurred in recent years are relatively small. Indeed, 89.3% of priests with allegations of child sexual abuse against them were ordained prior to 1979 (Terry et al. 2004, 5).

The Australian Inquiry reported that 90% of the claims in the private sessions concerned allegations of child sexual abuse that occurred before 1990, and only 5.8% of the claims concerned allegations that occurred post 1990. 4.2% of the claims did not include a date (RCIRCSA 2017, Vol. 16, Book 1, 17). Generally, from 1990 to today there are very low numbers of first reported cases of child sexual abuse. As stated in section 3.4.1. during the period 2000-2010 less than ten Australian Catholic priests in total were the subject of a first allegation (or only allegation) of child sexual abuse. For the period commencing in 2010 this number has dropped to less than five. During the period 2000-2010 0.1% of Catholic priests were the subject of a first allegation of child sexual abuse (RCIRCSA 2017a, 22).

The figures cited above suggest that child sexual abuse in Church institutions is declining. However, it must also be considered that there is often a delay in reporting acts of child sexual abuse. Indeed, it is not uncommon for allegations of child sexual abuse to be made decades after the alleged act took place. Therefore, it is possible that instances of child sexual abuse are still occurring in Church institutions in large numbers but are not being currently reported and will presumably be reported decades from now. This was the view that was expressed by the Australian Inquiry. On the other hand, the Irish and John Jay inquiries argued that it is unlikely that the unreported numbers of child sexual abuse in contemporary times would be anything like the number of instances in the 70s. The view expressed in the Irish Inquiry and the John Jay Inquiry is likely to be the correct one given the current climate of awareness of, and responsiveness to, allegations of child sexual abuse – and the considerable opportunities, processes and requirements for reporting child sexual abuse. Moreover, as mentioned in Chapter Three regarding the Australian Inquiry, 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 number for the 1960s and 1970s. For one thing, the number of incidents of child sexual abuse that allegedly took place since the 2000s is much lower proportionally than the corresponding number for the 1960s and 1970s. 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, notwithstanding unevidenced speculation by the Australian Inquiry. For instance, the Australian Royal Commission has suggested that there is a delay of 30 years between an act of child sexual abuse

and the reporting of that act (RCIRCSA 2017, Vol. 16, Book 1, 18). However, the figure of 30 years is, as the Royal Commission states, simply an average; it would be inconsistent with the principle of averages to argue that all or most reports come after 30 years and there are few, if any, after (say) 10 or 20 years. Given that the 30-year time lag is an average then one would expect there to be a much larger number of allegations pertaining to acts of child sexual abusethat are claimed to have occurred during, say, the 20-year period 1995-2015 than the relatively small number of such allegations that have in fact been received.

Moreover, we note that there has been a very significant spike in the number of allegations during the period when the Royal Commission called for victims to come forward. Consider this quote from the chair, Justice McClellan (2017b), «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». Thus an important causal factor in the generation, since 2013, of large numbers of complaints of child sexual abuse in Australia (as opposed to the actual acts of abuse complained about) is the establishment of the Royal Commission itself (which commenced in 2013). This institutional intervention has, therefore, disrupted any pre-existing pattern of delay between an alleged offence and the reporting of it. Arguably, it has made it more likely that (at least) adults who are the relatively recent victims of child sexual abuse perpetrated by priests in the Catholic Church e.g. who suffered abuse in 1995-2010, are now more likely to come forward and make a complaint (and, indeed, seek redress in the form of payment). Yet, as already stated, there have been very few such complaints. Accordingly, it seems reasonable to assume that few complaints have been made – whether as a result of the Royal Commission or otherwise – because there have been few incidents of child sexual abuse in the post 1995 period and, especially, since 2000 (or, at least, 2000-2010).

A related issue concerns the problems caused by the delays in reporting allegations of child sexual abuse. For example, delayed accusations, included delays of decades, also delay Church investigations into accused persons. Therefore, in many cases the Church could not put in place restrictive measures to protect children in a timely manner because the Church did not know that a priest/church worker was an alleged predator, i.e. the Church could not restrict the ministry of a church worker, report allegations to the police, or defrock a cleric, until, in many cases decades after the alleged offences, due to the delay in allegations. As mentioned above, most of the allegations in these inquiries were first made decades after the alleged abuse and, therefore, did not come to the attention of the Church at the time of the abuse. Thus, most of the allegations that were made in all of the Irish inquiries were not known to the Church until the 90s. For example, «As with the other reports most of the allegations were not reported to the Diocese of Ferns prior to 1990» (The Ferns Inquiry 2005, 70). The Murphy Report states the following, «However, this criticism is made despite the Commission acknowledging that most of the complaints were made to the Church after 1995» (DACI 2009, 4). The John Jay Inquiry remarked that two-thirds of the allegations were made post 1993 and one-third of the allega-

tions were made in the single year 2002-2003 (Terry et al. 2004, 5). 44.4% of the allegations were made in 2002-2004 and 39.4% of the allegations were made in the 1990s (Terry et al. 2004, 90). This is despite the fact that 75% of the acts of child sexual abuse were alleged to have taken place from 1960-1984 (Terry et al. 2004, 27). Similarly, the findings of the Australian Inquiry show, of the claims in the private sessions that related to religious institutions, 90% of the claims concern incidents of child sexual abuse that allegedly occurred before 1990, and 5.8% of the claims concern incidents that allegedly occurred post 1990. 4.2% of the claims did not include the date of the alleged incident (RCIRCSA 2017, Vol. 16, Book 1, 17). Furthermore, 86% of all allegations made according to all the data collected by the Australian Inquiry of child sexual abuse commenced in 1950-1989 inclusive. The highest number of first-alleged incidents of child sexual abuse by a priest occurred in the 1970s (of the Catholic Church data (29% of claims with known dates) (RCIRCSA 2017, Vol. 16, Book 1, 34).

In the analyses of the various inquiries, we discuss reasons why the incidence of child sexual abuse reduced in the Church. These reasons include the introduction of government laws, and a growing awareness of the harm of child sexual abuse etc. In Chapter One we made this argument in relation to the Irish Inquiry. In Chapter Two we made this argument in concert with the John Jay Inquiry, in Chapter Three we made this argument in opposition to the claims of the Australian Inquiry who argue that incidents of child sexual abuse are possibly still quite high. However, the strongest argument concerning the probability that incidents of child sexual abuse has reduced is contained in the following analysis by the John Jay Inquiry.

> The "crisis" of sexual abuse of minors by Catholic priests is a historical problem. The count of incidents per year increased steadily from the mid-1960s through the late 1970s, then declined in the 1980s and continues to remain low. Initial estimation models that determined that this distribution of incidents was stable have been confirmed by the new reports of incidents made after 2002. The distribution of incidents reported since 2002 matches what was known by 2002 – the increase, peak, and decline are found in the same proportions as those previously reported. A substantial delay in the reporting of sexual abuse is common, and many incidents of sexual abuse by priests were reported decades after the abuse occurred. Even though incidents of sexual abuse of minors by priests are still being reported, they continue to fit into the distribution of abuse incidents concentrated in the mid-1960s to mid-1980s (Terry et al. 2011, 2-3).

The Australian Inquiry did not provide such an analysis despite the fact that it had the resources to do so, and also had the benefit of this prior analysis in the John Jay Inquiry.

Clearly acts of child sexual abuse in the Church decreased as a result of child-safety measures that were implemented in the Catholic Church, in some cases, decades ago, and which continue to be improved to this day. For instance, some of the changes in this area, as stated in the timelines in Chapters One, Two and Three concern the following: developments in procedures for complaints

handling; the use of psychological experts and treatment centres to assess priests accused of child sexual abuse; improved seminary training; changes in canon law; and improved screening processes, among others. It would be illogical to conclude that these measures did not result in reducing child sexual abuse.

Moreover, many of these measures were introduced in the Church in line with changes in the broader community. For instance, the Framework Document was implemented in 1996 (The Ferns Inquiry 2005, 39). Similarly, the Child Care Act 1991was fully implemented by the Government of Ireland in 1996 (DACI 2009, 100). We have argued that the Church's response to the problem of child sexual abuse in its ranks evolved with the broader community's understanding of, and response to, child sexual abuse. For example, we can clearly see, in section 1.7, that the Church in Ireland's developments regarding child sexual abuse were consonant with the broader community. For instance, prior to the mid-seventies there was little public knowledge regarding the scope or the extent of the damage of child sexual abuse. It was only in the early 1980s that this knowledge emerged in Ireland. At this time, the Church began to implement training and screening in seminaries to try to combat the problem.

In the USA the Catholic Church has been working to combat child sexual abuse in the Church for decades and processes that were put in place in the Catholic Church over these years, taken as a whole, evidently have been effective. For instance, many of the recommendations made in the John Jay reports were partly implemented at the time that the reports went to print and continued to be implemented (Terry et al. 2011, 122). This was similarly the case in Australia as is evident in section 3.6.

Throughout the book we discuss changes related to the handling of child sexual abuse allegations, made by the Catholic Church both prior to and in response to recommendations made by the commissions of inquiry, e.g. changes in the reporting structures and mechanisms in the Church as a result of findings of inquiries. The reports of the three commissions state that the evidence indicates that these safeguarding mechanisms have been successful in preventing child sexual abuse in the Church and in ensuring that complaints are handled in an effective manner. Doubtless, there is room for improvement. However, it is conceivable that the Church will ultimately have the most stringent child safety mechanisms of any comparable institution in these three countries – largely, as a result of these inquiries. Some child safety measures put in place by the Catholic Church since the 1990s include, new procedural laws and policies, changes to canon law, developments in seminary training that engage with child sexual abuse, better vetting processes, the creation of committees to respond to the problem, and the creation of redress schemes for victims of child sexual abuse.

Moreover, as mentioned previously, most of the allegations of child sexual abuse set forth in the findings of the inquiries were allegations with respect to incidents that took place decades prior to the allegations being made and, therefore, incidents that were likely not known to the Church until decades after they occurred. Accordingly, contrary to media reports, in many cases the Church could not have done more than it did to protect children from preda-

tors. Moreover, such was the time gap between the offence and the allegation of the offence, that in a significant number of cases the individuals in question were not known to be predators until after they had died.

The inquiries analysed in this book acknowledge these improvements. For instance, the Irish Inquiry had the following to say, «Since the implementation of the Framework Document [in 1996], the Archdiocese and other Church authorities report complaints of clerical child sexual abuse to the Gardaí – this is appropriate communication» and «In its Report into the Catholic Archdiocese of Dublin, the Commission stated that it accepted that the current archdiocesan structures and procedures for dealing with clerical child sexual abuse were working well».

In closing we make the following comment. The general assumption in the community that acts of child sexual abuse in the clergy are higher than in the general public is plainly false. Unfortunately, a child is at greater risk at home than a child is at a Church. As noted by Justice McClellan (2017a) in the opening address at the final sitting of the Australian Inquiry, «The Australian Inquiry 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». Moreover, the German Inquiry into child sexual abuse found that 83% of the alleged victims in the German Inquiry were alleged victims of incest (Deutsche Welle 2019).

APPENDIX 1

The Independent Inquiry into Child Sexual Abuse (England and Wales)

A1.1. The Independent Inquiry into Child Sexual Abuse general comments

The Independent Inquiry into Child Sexual Abuse was established as a statutory inquiry in 2015 (IICSA n.d.a.), and is ongoing at the time of writing this book. The IICSA worked in much the same way as the Irish and Australian inquiries. For example, it divided its work into three main components: (1) The Truth Project – where complainants told the commission stories of alleged sexual abuse; (2) The Research Project, and; (3) The Public Hearings Project (IICSA n.d.b.). Like the Australian Inquiry, the IICSA was interested in child sexual abuse in a range of different institutions, i.e. not only Catholic institutions (which were the exclusive focus of the John Jay Inquiry). As with the Australian and Irish inquiries, the IICSA defined a child as someone under the age of 18, worked with a wide and vague definition of child sexual abuse, and did not investigate or substantiate allegations of child sexual abuse. Yet, the IICSA also diverged from its predecessors. For example, the IICSA investigated the sexual abuse of adults. Thus: «For the purposes of this Inquiry "child" means anyone under the age of 18. However, the panel will consider abuse of individuals over the age of 18, if that abuse started when the individual was a minor» (IICSA n.d.c.). I note, the IICSA consider acts of grooming to be child sexual abuse which is relevant here. Yet, what the IICSA counts as grooming is unclear (IICSA Research Team 2020, 68). Indeed, it is difficult to distinguish grooming actions from other actions, such as merely befriending a minor, which might be entirely innocent at the time they took place. At any rate, the panel's invocation

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of these prior acts is significant since, as just mentioned, acts of grooming are considered child sexual abuse although, as just noted, what the IICSA counts as grooming is itself unclear. Included in this category may be cases where an attraction developed on the part of an adult (i.e. a person over 18) to a person under the age of 18 but over the age of consent, e.g. a 17-year-old, and where the adult decided to wait to have sex until the 17-year-old reached the age of 18. Also included in this category would be the case of Bridgette Macron, who was a teacher at a Catholic school and who developed an attraction to Emmanuel Macron, who is now the President of France, when he was under the age of 18, but who waited until he was 18 in order to begin a relationship with him. A further difference between the IICSA and the other inquiries is that the IICSA referred all allegations of child sexual abuse to the police (IICSA n.d.d.). Moreover, the inquiry continues to work in consultation with the Australian Royal Commission (IICSA n.d.d.) and in doing so has likely imported errors from this inquiry. For instance, the IICSA accepts the claim of the Australian Inquiry that 7% of all priests in Australia engaged in child sexual abuse; a claim argued in Chapter 3.4.1. of this book to be incorrect. The IICSA was also heavily influenced by the findings of other previous inquiries including the claim in the John Jay Inquiry that in the Catholic Church in the United States male-on-male child sexual abuse is to be understood as situational rather than the result of a homosexual orientation; a claim for which, as we have shown in Chapter 2.6, the John Jay Inquiry does not provide credible evidence.

One welcome difference between the IICSA, on the one hand, and the Irish and Australian inquiries, on the other, concerned their precise language regarding complainants/victims of child sexual abuse. For instance, if a complaint was not substantiated by the Church or by a court trial the person making the allegation was called a «complainant» if an allegation was substantiated the person making the allegation was called a «victim» or «survivor» (IICSA 2020, 7).

A1.2. The investigation into the Catholic Church

This appendix discusses the findings of the IICSA (2020) report on the Catholic Church. Its investigation report concerns the nature and extent of child sexual abuse in the Catholic Church in England and Wales and the institutional response to allegations of child sexual abuse. This interim report is based on the statistics from the Catholic Church regarding allegations of child sexual abuse and the findings of three sample case-studies: Ampleforth and Downside Abbeys and their schools (2018): Ealing Abbey and St Benedict's School (2019c); and the Archdiocese of Birmingham (2019b).

A1.2.1. Mistakes and misreporting

There are numerous mistakes in the investigation report attributed to Professor Alexis Jay OBE, Professor Sir Malcolm Evans KCMG OBE, Ivor Frank, and Drusilla Sharpling CBE. Moreover, the language in the IICSA investiga-

tion report is, at times, imprecise and inconsistent. For instance, in the Executive Summary it states that, «Between 1970 and 2015, the Roman Catholic Church received more than 900 complaints involving over 3,000 instances of child sexual abuse» (IICSA 2020, v). Yet, in the Introduction it states, «Between 1970 and 2015, the Church received more than 3,000 complaints of child sexual abuse» (IICSA 2020, 2). These figures are presumably taken from the Bullivant Review (2018), although we do not have a reference in the Executive Summary or in the Introduction for these figures. However, the figures from the Bullivant Review are reprinted in the body of the IICSA investigation report. The Bullivant Review is a report that contains data and analysis regarding child sexual abuse in the Catholic Church. It was commissioned by the Catholic Church and undertaken by Professor Stephen Bullivant. The figures in the Bullivant Review indicate that between 1970 and 2015 there were 931 complaints received, 1753 individuals came forward, there were 3072 instances of alleged abuse, and 936 subjects of complaints (IICSA 2020, 16). This gives clarity on the matter. The Introduction is presumably mistaken in claiming that there are 3,000 complaints; there were actually 900 complaints (and 3,000 instances of alleged sexual abuse).

Moreover, the reporting in the IICSA is unclear in respect of some important issues; clarification that is otherwise provided in the Bullivant Review. Some examples include the failure in the IICSA to make clear the imprecise nature of the figures in the Bullivant Review due to imprecise records provided by the Catholic Church. For instance, where specific figures were not given in the records provided by the Catholic Church a figure was created in the Bullivant Review that represented the lowest possible number, i.e. 'multiple' individuals were represented as two individuals. Moreover, the IICSA does not mention that a single complaint accounts for 750 instances of alleged abuse. This was because the alleged abusive activity (comprised of 750 instances of abuse) occurred over a period of four years. Crucially the IICSA omits to mention that this single complaint accounts for a third of all alleged instances of abuse in the diocesan data (a third of the 2049 total instances of alleged abuse). Additional data was supplied by religious orders (Bullivant 2018, 7-8).

A further problem with the report concerns inconsistencies between claims made in the main body of the text of the report and the evidence provided for these claims in the references supplied. For example, let us take the case of RC-F95. In the Ampleforth Downside case-study report, which precedes the Investigation Report, it is stated that:

> In November 2001, RCF95 was referred to Dr Elizabeth Mann by Abbot Wright for his addiction to pornography, which he viewed online. It appears that his preference was for sites depicting 'freshfaced' young men aged 18–24…On 5 May 2006, NYP were contacted by the school. They reported that an audit of their computer systems had revealed that RCF95 had attempted to access sites restricted by Ampleforth's firewall. A strategy meeting was held that same day and RCF95 was suspended from his teaching post. His computer was seized by

> NYP. Forensic examinations were conducted which showed that RCF95 had 'attempted to access adult homosexual sites, but not those involving children'. There was no evidence that RCF95 had committed a criminal offence. The investigation was therefore closed by police (IICSA 2018,61-2).

Yet, the IICSA investigation report, when referring to this case, states that, «A number of the accessed sites contained the word "boy" in the title and showed "young adolescent males"». However, the reference supplied does not corroborate this. Instead, it states that the Abbot in charge of RC-F95 recalled, «When I pointed out that some of the sites to which he had sought access looked as if they were of adolescent males, he denied looking at anything illegal…» (Ampleforth Abbey n.d.). It may be the case that the IICSA have not included the full reference to this case, given that the online reference only shows a single page of a report. However, the IICSA investigation reports that the (pornographic) websites showed «young adolescent boys». This is a crime. By contrast, the reference states that the males looked like «adolescent males». Indeed, it does not even state «young» adolescent boys. Given that the police deemed there to be no evidence of criminal activity we might reasonably conclude that the IICSA has seriously misreported this. For if the websites did indeed show images of «young adolescent boys» RC-F95 then would have been charged with a criminal offence; but he was not (IICSA 2020, 39).

Another more important case of misreporting is this one. The Executive Summary of the IICSA report claims that it is an error to consider child sexual abuse in the Catholic Church to be an historical problem because there have been 100 «reported allegations» since 2016 (IICSA 2020, v). Here we need to distinguish between allegations made since 2016 and allegations made since 2016 of instances of child sexual abuse that have allegedly taken place since 2016. IICSA's claim that child sexual abuse is not an historical problem depends on the truth of the latter claim, i.e. that the (alleged) child sexual abuse has taken place since 2016 and not merely the allegations of it. Yet, crucially this claim in respect of recent instances of child sexual abuse is unevidenced; it does not even have a reference purporting to provide the evidence to back it up. Moreover, it is inconsistent with information in the main body of the text which clearly states the following:

> The annual reports do not consistently identify the years in which the abuse is alleged to have occurred. For example, the 2016–17 report includes information about the date when the abuse was first said to have occurred. This information was not included in the 2018 annual report. It is unclear whether the increase in the number of complaints is indicative of an increase in offending or an increase in the reporting of such matters or both (IICSA 2020, 18).

So, the Executive Summary holds it to be a grave error to believe that child sexual abuse in the Catholic Church is an historical problem and offers the 100 reported allegations as the evidence for this. But it offers no evidence for this very important claim; a claim that is inconsistent with the findings of the Irish

and John Jay inquiries and our analysis of the findings of the Australian Inquiry. Moreover, in the body of the very same report it is stated that it is unclear if the allegations in the recent annual reports of the Catholic Church are allegations of acts of child sexual abuse that (allegedly) occurred in the distant past or in the very recent past; that is, it is unclear whether the allegations pertain to historical acts or contemporary acts. And there is this further point. The IICSA does have the figures for 2016, and they clearly demonstrate that most of the allegations in the 2016 annual report pertain to alleged acts of child sexual abuse that, if they occurred, they occurred in the distant past, i.e. they are allegations of historical child sexual abuse. Let us pursue this matter further.

It is known, according to the references given in the IICSA Report, and regarding the 2016 report, that there were 112 allegations of child sexual abuse (Table 4 n.d.). Moreover, in the 2016 report we have an indication of when the alleged acts of abuse occurred. For instance, this report contains the following table: «Table 5 [n.d.]. Date when abuse first occurred by type and total number of victims/ survivors» it states that in 2016 there were in total 30 victim/survivors. Furthermore, the table has the following categories, sexual abuse (16), physical abuse (1), emotional abuse (5), neglect (1), child sexual abuse images (7), and not known (1). The table states that a person may have suffered abuse in more than one category[1].

Certainly, some of the annual reports of the National Catholic Safeguarding Commission (particularly 2018) are lacking relevant dates. However, the Bullivant Review, which is otherwise referenced by the IICSA, demonstrates that there is a clear trajectory of significantly diminishing cases of child sexual abuse. To be clear; this is not a point about when the allegations were made but rather when the alleged acts of child sexual abuse allegedly occurred. The Bullivant Review (2018) covers the years from 1970 to 2015 (14). So not only is the IICSA's claim that child sexual abuse is not an historical problem unevidenced; the contrary claim that it is historical is well-evidenced by the data that they have and use.

Furthermore, the conclusions in the Irish and John Jay inquiries indicate that child sexual abuse in the Catholic Church, in the western world, is largely an historical problem. Indeed, the John Jay Inquiry strongly endorses this argument (Terry et al. 2011, 2-3). The IICSA is familiar with these reports and makes use of their findings regarding other considerations. At this point it is beginning to look as though the IICSA is not only making the highly significant but false claim that child sexual abuse is not an historical problem but is disingenuous in doing so.

Regarding the figures in the Bullivant Review (2018) it is worth keeping in mind the delay in reporting, which is also consistent with other inquiries, i.e. most of the complaints that were made to the Catholic Church in the past twenty years were historical in nature (17). The problems with the delays in reporting have been discussed extensively in this book. Moreover, despite contrary state-

[1] Please see, (IICSA 2020, 18).

ments,the Church did not neglect to notify Statutory Bodies about complaints of child sexual abuse. Instead, the Church did not report most complaints of child sexual abuse to Statutory Authorities at the times of the alleged offenses, because most complaints were not made to the Church and, presumably therefore, not known to the Church until decades after the alleged offenses were committed. Regarding the data in the Bullivant Review (2018), 81% of allegations of child sexual abuse were reported to the Statutory Bodies when the Church received the complaints (18). Regarding the complaints that were not made to the Statutory Bodies at the time the complaints were made: the reason is unknown in 50 cases (32%); the alleged perpetrator was deceased at the time the complaint was made in 36 case (23%); victims were unwilling to proceed in 26 cases (16%); in 15 cases (9%) the Church was informed by a third party; in 11 cases (7%) there was insufficient evidence to identify the alleged perpetrator; in 13 cases (8%) it was believed that it was not necessary to involve Statutory Authorities; in 3 cases (2%) the perpetrator was in gaol; in 4 cases (3%) the case was referred to a different diocese (20). In short, the evidence indicates that the Church did report allegations of child sexual abuse to the Statutory Authorities in a timely manner.

A1.2.2. Desk research

The desk research that informed the Investigation Report comprised of: (1) a review of a sample of safeguarding files, undertaken by Mrs. Edina Carmi, an independent safeguarding consultant, and (2) a rapid evidence assessment (REA), which is a fast and targeted review and analysis of the literature regarding child sexual abuse and religious institutions (IICSA 2020, 6). The REA report is titled «Child sexual abuse within the Catholic and Anglican Churches: a rapid evidence assessment» (IICSA Research Team 2017). This report has clearly suffered from undertaking its *fast* assessment, instead of a careful, rigorous and full systematic review, and, not unlike the investigation report, it is full of errors. Some of the errors were corrected after its original publication in 2017. For instance, in 2018 multiple corrections were made in relation to multiple roles, functions and activities of the Church, including the following ones: the involvement of the Anglican Church in services and programs for children; the role of the Archbishop of Canterbury; the description of a research study; the role of independent audits of diocesan safeguarding practices; the role of the Church of England and the Anglican Communion; the relationship of the Church of England and Church schools and youth groups; the Archbishop's Council and the safeguarding policy of the Church of England. The research team also used the incorrect Church of England safeguarding policy in the original version of the document (IICSA Research Team 2017, 2). At the time of writing it is unclear whether the Catholic Church has provided or will provide a list of corrections of the errors made by IICSA in respect of the Catholic Church. However, it seems likely that it will be obliged to do so, given the experience of the Church of England.

The IICSA relies on some 'information' and arguments in the REA which are recycled misinformation and invalid (or contentious) arguments. For instance, the John Jay argument to the conclusion that male-on-male child sexual abuse in the Catholic Church in the US is situational rather than driven by homosexual orientation has been uncritically accepted by the Australian Inquiry and the IICSA (2020, 15). This is both surprising and problematic given that there is academic research (Sullins 2018) that challenges this claim and also new evidence unearthed by the IICSA, especially in the case-study into Ampleforth and Downside, that undermines the John Jay conclusion and, therefore, the view propounded by the IICSA. For instance, the case of Fr Bernard is relevant here (IICSA 2018, 59). Fr Bernard initially abused boys and later sexually harassed adult males when he attended the University of Oxford and had opportunities to interact with, indeed harass, adult females. Evidently, therefore he demonstrated a sexual orientation to males (whether adults or boys). Furthermore, the IICSA provides details of the pornographic content that predator monks, who were charged with child sexual abuse, were accessing on the internet, i.e.

> …RCF18…was arrested in February 2004 for several offences including buggery, indecent assault and incitement to commit gross indecency offences. His computer was also seized and searched as part of the police enquiry; pornographic material was found, as well as evidence that he had posed as a 19yearold girl in order to engage in sexually explicit online chats with males. DSU Honeysett told us that while this material 'clearly indicated an interest in adolescent boys, there was no evidence to show that those boys were [in fact] under age' (IICSA 2018, 55).

As with Fr Bernard, RC-F18 (and other predator monks), sexually abused boys and displayed a homosexual orientation in manifesting a clear desire for male-to-male sexual activity when given the choice between this and male-to-female sexual activity. Hence, the IICSA's own evidence is contrary to the thesis of situational male-to-male sexual behavior put forward in the John Jay Report – a thesis that the IICSA uncritically endorses. Here it is worth noting that the John Jay argument of situational male-to-male sexual behavior is now 10 years old and its claims worthy of revision regarding the new evidence in this report and also the Vatican report into ex-Cardinal Theodore McCarrick, who is alleged to have abused boys and men. Saliently, McCarrick was not lacking in opportunities to abuse girls but he chose to abuse males exclusively (Secretariat of State of the Holy See, 2020).

A1.3. Conclusion

The interim findings of the IICSA are not dissimilar to the findings of the Irish, John Jay, and Australian inquiries, analysed in this book. For instance, and notwithstanding the contrary claim made in the Executive Summary, the allegations of child sexual abuse documented in the IICSA are largely historical, there was a significant delay of decades in the reporting of most of the alle-

gations, and most of the cases concern male-on-male sexual abuse. Moreover, the evidence presented in the IICSA demonstrates that the Church has introduced safeguarding measures over time that have largely been effective, but have been flawed in some respects. Some of the safeguarding measures that were put in place include the following: In 1994 «Child abuse: pastoral and procedural guidelines: a report from a working party to the Catholic Bishops» was produced (IICSA 2018, 2); in 2001 the Nolan Report is published. It contains 83 recommendations and encourages the 'One Church' approach, which concerns a universal set of principles, policies and practices that prioritizes the welfare of children. As a result of the Nolan report, the Catholic Office for the Protection of Children and Vulnerable Adults (COPCA) is established (IICSA 2020, vi-ii). The Nolan report stated that its recommendations should be reviewed after five years (IICSA 2020, 40). In 2007 the Cumberlege report, Safeguarding with Confidence, is published. This report claims that 79 of the 83 Nolan recommendations had been addressed in full or in part. In 2008 the National Catholic Safeguarding Commission (NCSC) is formed to set the strategic direction of child protection policy and to monitor compliance. Each diocese now has a safeguarding commission supported by safeguarding coordinators and safeguarding representatives in parishes and religious institutes (IICSA 2020, vii). In 2011 Lord Carlile of Berriew, CBE, QC, was commissioned to produce a report into matters relating to Ealing Abbey and St Benedict's School, Ealing (IICSA 2018, 3). The report was generally positive but also flagged some areas for improvement, «The changes brought about by Nolan and Cumberlege resulted in improvements over the years. These included more formal handling of reports of child sexual abuse, better training for the clergy, religious and those involved in safeguarding, and greater cooperation with the statutory authorities. This is in contrast, however, with slower progress in other areas» (IICSA 2020, vii).

APPENDIX 2

The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (New Zealand)

A2.1. Introduction

The *Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith- Based Institutions* was established under an Order in Council to inquire into the abuse and neglect of children, young people and vulnerable adults in the care of state and faith-based institutions in New Zealand (NZ), primarily between 1950 and 1999. The New Zealand Inquiry, like the Irish Inquiry, was commissioned to investigate all forms of abuse including physical and emotional abuse as well as sexual abuse. In contrast to the other inquiries analysed in this book, the NZ Inquiry states that it will not quantify claims of abuse that were within the legal and social norms of the time, and gives the example of corporal punishment in schools, which was legal for many years. Lastly, it is important to stress that the NZ Inquiry is concerned with abuse that results in «serious harm to the individual» (RCIHAC 2020, 12)[1].

The commentary in this appendix analyses the report that informed the interim findings of the inquiry and that concerns the indicative estimates of the size of the cohorts of people in care over the afore-mentioned period and, importantly, the levels of abuse – *Indicative Estimates of the Size of Cohorts and Lev-*

[1] It will be interesting to see if this commitment extends to sexual acts that were consensual and legal at the time of the sexual act but are now considered to be acts of child sexual abuse. Thus far, the other inquiries have not made allowances for these cases.

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els of Abuse in State and Faith-Based Care 1950 – 2019. Notably, the indicative estimate at its high end is that 256,000 people in NZ were abused in state and faith-based institutions between 1950 and 1999. However, at its low end the indicative estimate is 36,000. This is a remarkably wide range even in relation to what are avowedly only estimates. What is the factual basis for these estimates? The figures on the Royal Commission's website are very different. There it states that a mere 2,000 complainants, i.e. persons, have registered with the Commission (RCIHAC 2020,4)[2].

An additional source of complaints numbers are to be found in the complainant data provided by the NZ care-based institutions themselves. This data consists of 6,500 complainants. It is assumed by the Inquiry that most of the 2,000 complainants who registered with the Commission had also made complaints to institutions. Therefore, the number of complainants is assumed to be 6,500. Accordingly, we are entitled to take the figure of 6,500 complainants as the factual basis for generating meaningful estimates of the levels of abuse.

The Commission recognizes that the number of persons who have made a complaint is a tiny fraction of their estimated numbers and, in particular, their high-end number of 256,000; in fact, it is less than 3%. What possible justification does it offer for this extraordinary thirtyfold inflation or even for the low-end figure of 36,000 (a fivefold inflation)? And, to reiterate, we need to keep in mind, that complaints are not necessarily offences. The Commission says:

> While this is low compared to the estimated cohort of those abused in care, we expect these numbers to substantially increase over time with our targeted community engagement and outreach, and the increased publicity and resulting public awareness at the times of our public hearings (RCIHAC n.d.).

On the face of it, this justification for the high-end figure of 256,000 is not merely speculative but fanciful. Shortly, in this appendix the discrepancy between the actual figures and the estimated figures will be discussed. However, before discussing how the 256,000 figure, in particular, was created it is worth noting that this indicative estimate is already being treated in the worldwide press as an actual number rather than a high-end estimate based on a contestable, indeed speculative, methodology with a factual basis of 6,500 complaints. For instance, on December 16, 2020, Reuters online ran with the headline, «New Zealand child abuse inquiry finds quarter of a million harmed in state and faith-based care» (Menon 2020). This article begins by making a, supposed, factual claim that 250,000 people were abused in state and faith-based care in NZ. Moreover, the only institution that is named in the article is the Catholic Church, leaving the misleading impression that, *as a matter of fact*, tens of thousands (at

[2] In the Martin Jenkins Report the number is, as of July 2020, 1,332 'survivors' of abuse. The Commission refers to complainants as 'survivors'. However, as stated at the outset in this book, complaints are allegations that an offence took place; they are not necessarily true allegations. Therefore, someone who makes a complaint is not necessarily a survivor; rather they are complainants.

least) were abused in Catholic institutions. Clearly, the figure of a «quarter of a million harmed in state and faith-based care» that the Commission has provided to the media is not a fact and, indeed, as we will see, it is at best a highly contestable speculation.

A2.2. Martin Jenkins Report

The Inquiry commissioned Martin, Jenkins & Associates Limited to provide indicative estimates of the number of people who: (1) were in state care from 1950- today; (2) were in faith-based care from 1950- today; and (3) the numbers of people who were abused in state-based/faith-based institutions from 1950 – today. This task was commissioned to satisfy clause 35.1 (b) of the terms of reference of the Commission (RCIHAC 2020, 3).

Martin Jenkins are a consulting firm that advise clients in the public, private and not-for-profit sectors. Yet, they seem not to be prepared to stand by their own research findings. For instance, in their report to the Inquiry they remark,

> no responsibility is accepted by Martin Jenkins or any of their officers, employees or agents for errors or omissions however arising in the preparation of this report, or for any consequences of reliance on its content, conclusions or any material, correspondence of any form or discussions arising out of or associated with its preparation (RCIHAC 2020, preface).

Furthermore, the Royal Commission make the odd comment that the work of the Martin Jenkins group, which the Royal Commission has endorsed, «was not an academic or theoretical exercise. The purpose was to provide high-level estimates to help inform our planning for the work ahead» (RCIHAC 2020, 1). Does the Jenkins group, or the Royal Commission, stand by these research findings as reliable, factually based, estimates based on a sound methodology, or is it merely a set of speculations loosely connected to the facts by way of a dubious methodology which they don't stand by and, as such, it should not be taken seriously, let alone relied upon by the Royal Commission to «inform planning of the work ahead»?

Let us now turn to a discussion of the methodology and findings of the Martin Jenkins Report. We note in advance two general deficiencies which call both the methodology and the findings, and therefore the entire report, into question, especially when these two general deficiencies are taken together. The first general point is that there are major gaps in the factual data upon which the Martin Jenkins group based its estimates. According to the peer review:

> As noted above, there are major gaps in the data on the numbers in care in the different settings… [For example, an] area where there are major gaps in the data is state-based boarding schools, where Martin Jenkins reports that almost no data is available prior to 2000. Martin Jenkins therefore had to estimate most of that cohort between 1950 and 1998 by extrapolation (p. 28). It is not obvious to us from the Martin Jenkins report that efforts have been made yet to obtain

> information from the schools directly. Some schools may no longer exist and some may exist but no longer offer boarding schools. Nevertheless, there are a limited number of such schools and a direct approach could well yield some result (TDB Advisory 2020, 6-7).

The second general point is that the Martin Jenkins group made many contestable, even dubious, assumptions in the creation of their estimates. Many of these are outlined in the peer review. We discuss these in detail below. This is especially the case in relation to its so-called 'top-down' method which it states is its most reliable method (more reliable than its other 'bottom-up' method).

As stated above, the Martin Jenkins group utilize a methodology to estimate the numbers of survivors of abuse in state and faith-based care that comprises of two different methods. The primary estimate uses the 'top-down' method. The secondary estimate uses the 'bottom-up' method. The two different methods produce alternative indicative estimates. This methodology is explained below.

> The top-down approach starts with the number of people in State and faith-based care settings between 1950 and now – "the Cohort" – and uses data on prevalence of abuse (from New Zealand and international studies) to estimate the percentages of the Cohort who may have been abused. The bottom-up approach starts with the number of people in State and faith-based care (in a range of settings) between 1950 and now who have identified that they have been abused in care – the "known" claimants of abuse…The additional 'suspected' survivors of abuse are then estimated using assumptions about the level of under-reporting, based on the proportion of crime that goes unreported in New Zealand (RCIHAC 2020, 5-6).

Utilizing the top-down method the report estimates that 655, 000 people passed through state and faith-based care between 1950 and 2019. This number comes with a warning that the true figures could be higher and hence the true number of abuse could also be higher. The cohort from faith-based settings is estimated to be one of the largest groups at over 254,000 people (about 31 percent of the total) (RCIHAC 2020, 7). The top-down approach estimates that between 114,000 and 256,000 children in care may have been abused between 1950 to 2019. This is 17 – 39% of the cohort.

Of note, the researchers used, mostly, studies that focused on sexual and physical abuse and, therefore, the assumption is that these numbers are heavily weighted towards the same kinds of abuse (RCIHAC 2020, 8). Indeed, one of the studies used by the Martin Jenkins researchers was the Australian Royal Commission (please see Chapter 3 of this book for a full commentary on this inquiry). Yet, the findings of the Australian Royal Commission largely concern unsubstantiated complaints. Furthermore, unlike the NZ Inquiry the Australian Inquiry did not make a distinction between serious and less serious cases of abuse, and certainly did not make allowances for changing social norms and laws, as the NZ Inquiry declares it will do. Therefore, the findings of the Australian Royal Commission cannot be relied upon as a guide to estimate abuse numbers for the NZ Royal Commission.

What are we to make of the top-down method and the findings it generates more generally? The estimates arrived at by the top-down method, and the figure of 256,000 'survivors' in particular, relied on the findings of overseas research. However, much of that research is contestable, e.g. the idea that a time lag of decades between the offence and its reporting can be reliably used to make projections (see discussion in Chapter 3 section 8), and in any case overseas findings are not necessarily transferable to NZ, e.g. to Māori in NZ child welfare systems (RCIHAC 2020, 3). Most important, its favoured top-down method ignores completely the NZ complaints data, i.e. the 6,500 complainants, and relies exclusively on overseas research and extrapolates from this to generate estimates for NZ child abuse and, in particular, the estimate of 256,000 'survivors'. Remarkably, the Martin Jenkins researchers are of the view that in order to reliably determine the extent of child abuse in NZ it is unnecessary to make use of what is ultimately the only directly factual basis available upon which an estimate of the quantum of child abuse in NZ could be made, namely, that over the period 1950 to the present i.e. in 70 years, there have been 6,500 persons who complained of child abuse in faith-based and state care institutions in NZ. As we have seen throughout this book, the principal basis used in all the other national inquiries, i.e. the Irish Inquiry, the John Jay Inquiry and the Australian Inquiry etc., for estimating the extent of child sexual abuse in the relevant institutions in the country in question has been the complaints made by persons in that country of members of those institutions. Thus, in order to determine the extent of child sexual abuse in the Catholic Church in the US, the John Jay Inquiry relied, obviously, on US complaints data rather than, for instance, NZ data, research and extrapolations therefrom. We conclude that the top-down method is highly unreliable, and the findings generated by it, notably its high-end figure of 256,000 'survivors', fanciful.

A specific problem with the indicative estimates, generated by the top-down approach, of particular interest to our focus in this work on child sexual abuse concerns the estimates of the gender of the abused. For instance, the estimates rely on evidence that claims females are more likely to experience child sexual abuse than males (RCIHAC 2020, 61). However, the evidence in the commissions into the Catholic Church clearly indicate that the prevalence of male-on-male abuse is far greater than male-on-female, or female-on-female abuse. Hence, it is likely that this estimate will not be relevant for the Catholic Church in NZ. Moreover, this estimate is in conflict with the allegations that were made to the NZ Royal Commission. Regarding the gender of those who made allegations to the Royal Commission up to July 2020, 760 were men (57 percent) and 572 were women (43 percent) (RCIHAC 2020, 79).

What of the bottom-up method and its findings? At least its starting point consists of facts about child abuse in NZ and, therefore, its findings – notably, its high-end figure of 65,000 'survivors' – more likely to be plausible (other things being equal).

The bottom-up approach, is an alternative approach which offers a different indicative estimate and, as mentioned above, is considered by the Martin Jenkins

group to be inferior to the top-down approach. The bottom-up approach utilizes as its foundation, as mentioned above, actual NZ data concerning abuse, i.e. 6,500 people have made claims of abuse while in state and faith-based institutions in NZ from 1950 to 2019 (RCIHAC 2020, 79). As mentioned above, this aligns it with the other national inquiries analysed in this book. However, it diverges sharply from these other inquiries by seeking to use unreported-crime multipliers from NZ and abroad to move from complaints data to estimated numbers of actual offences. The means used to create this estimate or estimated range (the unreported-crime multipliers) is open to question. We return to this issue below.

At any rate the Martin Jenkins group's application of unreported-crime multipliers suggest that the number of people who have been abused in care is between 5.6 and 10 times higher than the reported number of 6,500. Therefore, they estimate that 36,000 to 65,000 people have been abused in care between 1950 and 2019. This is between 5.5 and 9.9 percent of the total cohort in care, after adjusting for the overlap between settings.

It is noted above that the number in the bottom-up estimate is much less than the number in the top-down estimate. The researchers argue that the reason for the discrepancy is due to the fact that the data that was collected for the project did not 'capture' all the reported claims of abuse, i.e. they focus on sexual and physical abuse and not emotional abuse, for example. Moreover, it is argued that the multipliers used in this approach also do not cover all forms of abuse that are within the definition of the Inquiry. Hence, the Martin Jenkins group favour the larger number, that is, the top-down estimate (RCIHAC 2020, 9). Yet, as mentioned previously, the Australian Royal Commission, whilst not examining all forms of abuse, was more permissive than the NZ Inquiry regarding the severity of the abuse it allowed in its data. Hence, the distinction here is not as great as the Martin Jenkins group imagines. The obvious alternative explanation for the discrepancy is that the top-down approach is deeply flawed, not the least because it ignores the only direct factual basis for estimates of child abuse in these institutions during this period in NZ, namely, the complaints data (i.e. the figure of 6,500).

What are we to make of the bottom-up method and its findings? Let us first consider the reliance on unreported-crime multipliers. Unreported-crime multipliers vary greatly from one crime-type to another, from one jurisdiction to another and across time. Moreover, any credible projection of actual crime numbers of a particular crime type in a given jurisdiction at a particular short period, e.g. one year, has to be based on numerous contextual factors. The proposition that this could reliably be done for a suite of types of offences, e.g. child sexual abuse, physical abuse, across a wide range of institutions over a 70-year period using a smorgasbord of unreported-crime multipliers is an illusion. In the first place, the unreported–crime multipliers are themselves guestimates at best. In the second place, there are inevitably complex context specific factors in play which render the application of imported (from other countries or other crimes or other times) unreported-crime multipliers speculative at best.

Further, more specific points of criticism in relation to the bottom-up approach and its findings are made in the peer review. For instance, the peer re-

view mentions that the actual data used by the Martin Jenkins group shows that complaints have decreased over time. Yet, the researchers, while applying the method to the actual figure of 6,500, make the assumption that rates of abuse are constant over time, given the delay in reporting (TDB Advisory 2020, 6). Yet, as is shown in the body of this work, sexual abuse in the Catholic Church has demonstrably decreased. We might also assume other forms of abuse have reduced because of safe-guarding measures that have been introduced in the Catholic Church, i.e. in some cases adults are not permitted to be alone with children. Moreover, we would expect abuse to have decreased in the Catholic Church because less children are in the care of the Catholic Church than was the case historically, especially in the 70s. We assume similar arguments can be made for state-based care and other forms of faith-based care given changes in legislation relating to child sexual abuse and an increased awareness of the harm of child sexual abuse. Furthermore, we would expect that mandatory reporting schemes would influence the reporting of crimes.

As we concluded in respect of the top-down approach, the bottom-up approach while it has the virtue of using NZ child abuse complaints data as its starting point does not offer a reliable method to generate its estimates; accordingly, its findings should not be accepted. They are, at best, guestimates, albeit considerably less fanciful than the ones generated by the top-down approach.

A2.3. Conclusion

By way of conclusion let us return to the major findings in the NZ Commission's report of interest to us in this book, namely, the extent of child abuse, and child sexual abuse in particular, in faith base care institutions. A total of 2,300 people, out of the total of 6,500 reported to the Royal Commission, allege they were abused in faith-based care settings. 1,513 of these complaints concerned faith-based care institutions, homes, facilities, schools and 827 concerned, what has been called, wider faith-based care settings (RCIHAC 2020, 38). According to the preferred method of the Martin Jenkins report, the top-down method, it is estimated that between 53,000 and 106,000 people may have been seriously abused within faith-based care settings (RCIHAC 2020, 39). In the light of the above discussion, we conclude that these estimated figures in the Martin Jenkins report are fanciful and, as such, should be rejected out of hand by faith-based organizations and other relevant bodies.

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* Please note, online sources may be subject to ongoing modification and there may be instances where online sources have been modified since the publication of this book.

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