Centre for Excellence in Child and Family Welfare and
Victorian Council of Social Service

Responding to the Royal Commission into Institutional Responses to Child Sexual Abuse
Wednesday 1 May 2013

Organisational Governance- Risks and Responsibilities

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Introduction

I'd like to start with a couple of introductory remarks.

The subject we're dealing with is a horrible story of a failure of our society to protect our most vulnerable and innocent members from the worst of abuse that goes far beyond physical harm to the distortion of their emotional and social development and in many cases the loss of their lives – this failure has resulted in the actual and the emotional loss of lives, of not only abused children but of many close to them.

Probably no one comes to this subject without some baggage so let me declare mine. I am a practising Catholic who has been active in many Catholic welfare and social justice organisations over many years. I am very concerned about the governance of the Catholic Church and see the child abuse scandal as a symptom of wider governance failures in the Church. I have been involved in submitting and presenting to the *Victorian Parliamentary Inquiry Into The Handling Of Child Abuse By Religious And Other Non-Government Organisations.*

I also have a broader long-term interest in public and not-for-profit community services, social justice, and high standards of leadership and governance.

Given my Catholic background and the significant failures of my church in this societal failure, I will refer to the Catholic Church more than other organisations that have failed in protecting children in their care. I believe however that the points I make regarding governance and leadership apply across the board in this failure of our society to protect our most vulnerable and innocent members.

I want to stress that the sexual abuse scandal has two levels of criminality:

1. The actual sexual abuse of so many children, and
2. The aggravation of those abuses by organisations who were responsible for the abusers – failing to act in accordance with the organisation's basic values, and protecting criminal abusers, protecting the organisation at the expense of children, and worse, exposing further children to criminal abuse.

I will be focusing on institutional failures as I have been asked to talk about issues of organisational governance in the context of the Royal Commission. What are the risks and responsibilities for those institutions and what are the responsibilities of organisations' boards and their staff?

<u>Victorian Parliamentary Inquiry</u>

The current *Victorian Parliamentary Inquiry Into The Handling Of Child Abuse By Religious And Other Non-Government Organisations* is providing some idea of the pain and suffering that will be exposed, to a much greater extent, by the national *Royal Commission into Institutional Responses to Child Sexual Abuse*.

On Tuesday this week, Brother Tim Graham, the superior of the St John of God order in Australia and New Zealand, acknowledged to the Victorian Parliamentary Inquiry that there had been a systemic failure of scrutiny and accountability. I've been following the inquiry fairly closely and I think this is the first admission of systemic inadequacies in governance.

On the same day, the former bishop of Ballarat, Peter Collins, acknowledged to the same inquiry that there had been a persistent determination to retain known paedophile priest Paul David Ryan, despite the high risk. He commented that his predecessor Bishop Ronald Mulkearns made "terrible errors" and showed "great naivety" in moving paedophiles Gerald Ridsdale and Paul Ryan from parish to parish despite knowing they were child abusers. While Bishop Connors' honesty and genuine horror should be acknowledged, to speak of "terrible errors" and "great naivety" on the part of a church leader who effectively facilitated the sexual abuse of more children, begs the question as to the type of governance systems and structures that spawned such errors and naivety.

The Victorian Parliamentary Inquiry has been conducting hearings since October last year and there has been much evidence of organisations who failed fundamentally in their governance in dealing with the systemic sexual abuse and rape of children. So what can we expect from the Royal Commission into Institutional Responses to Child Sexual Abuse?

<u>Royal Commission into Institutional Responses to Child Sexual Abuse</u>

Francis Sullivan, CEO of the Catholic organisation set up to deal with the Royal Commission (the Truth Justice and Healing Council) has said publicly that the Church must be open with the Commission and admit to 'cover-ups' - a creditably transparent and accountable approach.

Last Saturday's Age newspaper reported that the Australian Catholic Church has recruited Ian Elliott, the head of the Irish Catholic Board for Safeguarding Children, as an advisor on child sex abuse. Mr Elliott says he is "not a fan" of government inquiries into child abuse in the Church. He apparently considers that organisational failures can be identified and corrected without government inquiries.

I think Mr Elliott is wrong in the case of Australia and, with respect, Ireland also. And this Royal Commission is not just about 'the Church' but is required to "investigate ***Institutional*** *(my emphasis)* Responses to Child Sexual Abuse", a very wide-ranging focus extending to all organisations, including government organisations.

Francis Sullivan and Ian Elliott present different attitudes to the role of the Royal Commission, but they probably reflect the range of responses in the religious and not-for-profit sectors in Australia. Both responses however acknowledge that as well as the individual crimes of violations of children, institutional failures have occurred that have aggravated the individual crimes of sexual abuse. The Royal Commission will no doubt comment on the gravity of such governance failures. I would suggest that considerable evidence of moral failure and criminal behaviour by institutions is already in the public domain.

<u>Corporate Governance</u>
Institutional failures, and certainly institutional crimes, are matters of corporate governance and reflect inadequate leadership of many organisations.

The Australian National Audit Office describes corporate governance as "the processes by which organisations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership, direction and control exercised in the organisation."

The OECD Principles of Corporate Governance point to the importance of "business ethics and corporate awareness of . . . societal interests of the communities in which (an organisation) operates."

In short, corporate governance is about organisations achieving their missions in an accountable and ethical manner, focused on outcomes, and managing risks; it is about living their values in a culture that ensures the commitment of their people to the organisation's goals and values. It is about boards and managers meeting their responsibilities for effective and ethical leadership.

There are positive and negative incentives for ensuring good governance in any organisation. On the positive side, good governance is about an organisation being successful, and the ethical requirements should be a given, indeed a bonus, for church and charitable organisations whose very existence is for the good of society. On the negative side, there are serious risks associated with poor governance, from failing to achieve outcomes to suffering reputational damage, criminal penalties, and injuring innocent people.

<u>The Royal Commission's role</u>

The Royal Commission into Institutional Responses to Child Sexual Abuse is an extraordinary action by government, an initiative supported by all sides of politics and by State governments. It is extraordinary not only because Royal Commissions are in themselves an extraordinary government response, but also because this royal commission addresses:

a. Crimes against children within trusted institutions
b. A failure by those trusted institutions to respond adequately, and
c. Criminal responses by those trusted institutions by:
    i. Covering up the offences
    ii. Protecting the abusers, and

iii. Exposing more children to harm through failure to report the abusers to State authorities.

The Royal Commission is tasked to seek justice for victims, and to ensure necessary changes to society and its institutions in order to prevent such scandalous situations ever recurring. The Commission's Letters Patent direct it "to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters." The Letters Patent require that

"claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored,
and that best practice (be) identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims."
(underlining added)

The Commission has received widespread and bipartisan support because its focus is a societal failure through abysmal failures of organisational governance, which involved organisations with a commitment to good works presiding over the worst of criminal abuse against the most vulnerable, namely our children.

The Royal Commission's Governance Challenge for Organisations

All not-for-profit organisations, of their very natures, want to achieve high standards of corporate governance, because they want to achieve their goals. Religious and not-for-profit organisations have a proud record of achievement in human services that has been badly damaged by the sexual abuse scandal. So what went wrong that has led to this Royal Commission? I suggest that all organisations affected by the royal commission must now ask that question in respect of their

own organisation's governance, and in testing the organisation's commitment to excellence in child welfare.

We should welcome the royal commission, recognising that we have a lot to contribute to it, and a lot to gain in our future work by examining the adequacy of our corporate governance systems and structures, and in ensuring that we adopt the highest standards in assisting the royal commission in its enquiries.

There are risks for all organisations in such an approach, but I suggest that the risks are much greater for any organisation that adopts a defensive or non-cooperative approach. More importantly, such a negative approach would not do justice to the many victims of sexual abuse in institutions, nor address the failures of institutions. Finally, cooperation with the purpose of the royal commission is consistent with the espoused values of all the organisations affected.

Four areas of organisational responsibilities warrant special consideration by the royal commission, and by organisations affected by the Commission's work:

1. Accountability and values
2. Recruitment and Supervision
3. Reporting of crime to civil authorities
4. Governance structures

First, accountability is simply answering to stakeholders for achieving the goals of the organisation through strategies and decision-making, in accordance with the organisation's stated values. In the case of institutional responses to child sexual abuse, organisations were faced with a situation where the children they were set up to nurture were subjected to the most horrible form of abuse, in many cases resulting in the ruin of their remaining child and adult lives. I would suggest that this is a worst-case scenario of organisational goal displacement, where the leaders of the organisation were so focused on protecting the organisation that they failed to consider their

primary goal, namely the good of others, and in the case of Christian organisations their values of Christ-likeness.

Second, any system of governance requires careful recruitment and supervision of staff, and the imbedding of the organisational values in an adopted culture. Recruitment checks pose considerable challenges in identifying child abusers, both in the filed of psychological checks and police checks. Supervision should be supported by a culture based on clear values which are critical to preventing unacceptable behaviour. The issue of values and culture is relevant to reporting.

Third, reporting of crime to civil authorities has been the subject of considerable debate. In my view, reporting evidence of sexual abuse to police is a moral imperative regardless of criminal mandatory reporting requirements, which the Victorian Parliamentary Inquiry and the Royal Commission are expected by many to support. The argument that a victim does not want the crime reported ignores the fact that there are likely other current and potential victims of an abuser and the police are best placed to deal sensitively with victims. An organisation harbouring a child abuser has a reputational interest in not reporting.

Fourth, good governance structures make accountabilities very clear particularly at the level of goals and values. Those accountabilities also should ensure that leaders are not free agents exercising personal discretion, but rather stewards of the organisation acting in a transparent manner, listening to their staff and clients and stakeholders and being open and transparent in their decision-making. Good organisations recruit and appoint as decision-makers people with an understanding of the community they serve who are responsive to that community, with a commitment to inclusivity and collegiality. Command-and-control leadership has been dumped by good leaders and by effective organisations. Finally, non-discriminatory selection practices, and balanced leadership

especially gender balance, are essential to effective governance structures and good decision-making.

Conclusion

To conclude, this royal commission would not have been necessary if all organisations that discovered sexual abuse of children within their ranks had acted in accordance with their stated and espoused mission and values. That would have involved a simple priority of protecting children and reporting terrible crimes to the police.

Rather than take every possible step to root out this evil, many institutions in many cases covered up the evidence to protect their reputations, failed to consider let alone protect the abused children, and enabled abusers to continue to abuse other children.

I am not aware of any worse example of governance failure than this response of generally well-regarded organisations in dealing with crimes that offend against their very purpose. The word ‘failure’ is an inadequate description of what were in some cases criminal acts by organisations not only to protect criminals but to thus expose further vulnerable children to terrible harm.

The obvious questions are:

- How could this happen, not only the abuse but the totally inadequate and at times criminal response by organisations that claim lofty ideals? - organisations whose very purpose is the good of others whether grounded in religious or humanitarian motives.
- What steps do those organisations need to take to ensure that such dysfunctional and irresponsible and even criminal organisational behaviour cannot occur again? Our present governance has been shown to be woefully inadequate.

I mentioned at the beginning the commendable public commitment of the CEO of the Catholic Truth Justice and Healing Council to openness with the Commission - a transparent and accountable approach. However, I think that approach needs another stage for all organisations that find their behaviour questioned by the royal commission. That stage is to ask and answer these obvious questions to determine the changes in organisational governance at the highest levels of decision-making.

This royal commission provides most importantly an opportunity to not only prevent the unacceptable recurrence of such a terrible scandal, but to ensure better pursuit of the important values of the religious and not-for-profit sector in the future, by the highest standards of corporate governance. To that end, it is imperative that all affected organisations report fully and helpfully to the royal commission without regard for institutional protection.

Peter Johnstone OAM is a former Director-General of Community Services in Victoria, has led boards of Catholic welfare agencies, and has served on many not-for profit boards and committees. He is also Chairman of Catholics for Renewal Inc, and in that role has submitted and presented to the Victorian Parliamentary Inquiry into The Handling Of Child Abuse by Religious and Other Non-Government Organisations. Peter consults in corporate governance as Principal of PJ Governance, and is a Fellow of the Australian Institute of Company Directors.