

**THE FAILURES OF AUSTRALIA TO PROTECT AGAINST
AND PROVIDE REDRESS FOR THE SYSTEMIC SEXUAL VIOLENCE
AND COVER-UP BY CATHOLIC CLERGY AND OTHER INSTITUTIONAL
OFFICIALS**

**Shadow Report to the United Nations Committee Against Torture
In Connection with its Review of Australia**

53rd Session, November 2014

I. Reporting Organisation

This report is submitted by the Survivors Network of those Abused by Priests – Australia (SNAP) which has provided support to and sought justice and healing for Australian survivors of clergy sexual abuse for the past five years. SNAP Australia is part of an international network that was founded 25 years ago by a small group of survivors of rape and sexual violence committed by clergy within the Catholic Church. Today, the Network has over 20,000 members in 79 countries with support groups in 65 cities.¹

Since 2011, SNAP has been working for accountability in international legal mechanisms for the widespread and systemic rape and sexual violence within the Catholic Church.² Further to that effort, SNAP, along with the Center for Constitutional Rights, submitted a Shadow Report and Supplemental Report to this Committee during its 52nd session in connection with its review of the Holy See.

II. Summary of the Issue: The Failures of Australia to Protect Against and Provide Redress for the Systemic Sexual Violence and Cover-up within the Catholic Church and other institutions

A. Institutional Sexual Violence in Australia

We respectfully refer the Committee to the Shadow Report and supplemental submission in connection with the review of the Holy See for an overview of the global dimensions of the issue and the policies and practices of the Holy See that serve to subvert national systems and obstruct the right to redress.³ Those reports also set out the nature and degree of severe and often lifelong physical and mental pain and suffering commonly experienced by victims of

¹ More information about SNAP and resources for support and assistance can be found here: <http://www.snapnetwork.org/>. SNAP Australia is grateful to the [Center for Constitutional Rights](#) for its assistance and guidance in producing this report.

² More information and resources, including past legal submissions concerning the scope and scale of the problem of rape and sexual violence and cover-up in the church, can be found here: www.ccrjustice.org/snap.

³ See Center for Constitutional Rights and Survivors Network of those Abused by Priests, *Shadow Report Prepared for the 52d Session of the UN Committee Against Torture in Connection with its Review of the Holy See*, April 2014, available at http://www.ccrjustice.org/pdf/CCR_SNAP_Shadow_Report_apr2014.pdf [hereinafter “SNAP Shadow Report on Holy See”]; Center for Constitutional Rights and Survivors Network of those Abused by Priests, *Supplemental Submission to the United Nations Committee Against Torture in Advance of its Review of the Holy See During its 52nd Session*, April 2014, available at http://www.ccrjustice.org/files/SNAP_UNCATSuppReportFINAL_2014-04-18.pdf [hereinafter “SNAP Supplemental Submission: Holy See”].

rape and sexual violence in this context and meriting the attention of this particular Committee.⁴

Within Australia, sexual violence against children has long been widespread in religious and charitable institutions, particularly in the Catholic Church. Historically, Australian governments have chosen to avoid this issue. The danger to children and the damage already caused was brought to official attention again and again, and was either ignored, dismissed, and/or inadequately addressed, with opportunities for meaningful reform were wasted. This began to change when senior police in two states felt compelled to blow the whistle and bring egregious situations to the media regarding dozens of suicides which were linked to child rape by Catholic clergy in one state⁵ and then claims of police involvement in a high level cover-up of these crimes in another.⁶

On 12 November 2012, then Australian Prime Minister Julia Gillard announced the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission).⁷ This is the kind of national inquiry for which survivors had asked for decades but were denied. The Royal Commission will continue its work until December 2017, though recommendations resulting from specific case studies, as well as urgently needed redress recommendations, are expected to be issued before the rest of the Commission's work is completed. The Chair of the Royal Commission, The Hon Justice Peter McClellan AM, explained to the International Criminal Law Conference in October 2014 that:

“When the previous Government announced the establishment of the Royal Commission... the decision reflected a growing awareness in Government and the general community of the widespread and at times systematic sexual abuse of children within institutions. Over the past three decades there have been many inquiries in Australia which have touched upon or been concerned with the sexual abuse of children. ...more than 300 inquiries, of which at least 80 have looked at issues directly relevant to the Commission's work. That number speaks to the difficulty the community has found in confronting and dealing with these issues.”⁸

The Royal Commission released its Interim Report in June 2014. There are few conclusions available at this early stage, but the Interim Report did explain some of what has been learned from the Commission's work so far:

⁴ SNAP Shadow Report on Holy See at pp. 8-12.

⁵ Nick McKenzie, Richard Baker and Jane Lee, *Church's suicide victims*, The Age, 13 Apr. 2012, available at <http://www.theage.com.au/victoria/churchs-suicide-victims-20120412-1wwox.html>; Jane Lee, *They survived clergy abuse but are still paying a price*, The Age, 11 Sept. 2012, available at <http://www.theage.com.au/national/they-survived-clergy-abuse-but-are-still-paying-a-price-20120910-25oi1.html>.

⁶ Joanne McCarthy, *Top cop attacks Catholic church*, Newcastle Herald, 7 Nov. 2012, available at <http://www.theherald.com.au/story/761085/top-cop-attacks-catholic-church/>; Megan Levy, *'Satisfied' whistleblower weighs future in the force*, The Sydney Morning Herald, 13 Nov. 2012, available at <http://www.smh.com.au/national/satisfied-whistleblower-weighs-future-in-the-force-20121113-29941.html>.

⁷ Barney Zwartz, *Survivors look forward to their day of justice*, The Sydney Morning Herald, 13 Nov. 2012, available at <http://www.smh.com.au/national/survivors-look-forward-to-their-day-of-justice-20121112-298hz.html>; Barney Zwartz, *Finally, the truth can emerge*, The Age, 12 Nov. 2012, available at <http://www.theage.com.au/federal-politics/political-news/finally-the-truth-can-emerge-20121112-2986v.html>.

⁸ Speech by The Hon. Justice Peter McClellan AM, Chair, Royal Commission into Institutional Responses to Child Sexual Abuse to 14th International Criminal Law Conference 2014, Melbourne, 9 Oct. 2014, available at <http://www.childabuseroyalcommission.gov.au/media-centre/speeches/14th-international-criminal-law-congress-2014>.

- That “many responses by adults in authority were ill-informed, inadequate and at times harmful”⁹ (Articles 2, 12, 13 and 14);
- That “institutions respond to child sexual abuse by conducting internal investigations, without involving independent agents. This removes both the abuse and the response from external scrutiny;”¹⁰ (Article 12)
- That there are many significant barriers to Australian survivors of child sexual violence reporting the crimes against them to police or other authorities, being believed, having appropriate action taken and accessing justice and redress¹¹ (Articles 12, 13 and 14); and
- That “victims have often been denied justice by criminal or civil systems or redress schemes.”¹² (Articles 12 and 14)

In October 2014, McClellan elaborated on the failings of Australian criminal courts to provide justice to survivors:

- “the preliminary results from some of our research suggest that the opportunity to secure justice for victims of child sexual abuse through the criminal justice system may in fact be decreasing, rather than increasing...quite dramatically. This decline in the proportion of child sexual assault reports leading to charges or prosecutions has occurred in relation to both child sexual assaults reported when the complainant was still a child, and ...when the complainant was an adult.”
- “The rate of attrition in ... child sexual abuse cases ... has long been notoriously high. But if it is increasing this is troubling. In light of the decades of reform, we would be entitled to expect it to be getting considerably better.”
- “Relevant criminal convictions ... are essential information in the assessment of a person’s suitability under the working with children check regime. ... one important procedure for keeping known offenders, or those assessed as particularly at risk of offending, from working with children. If alleged offenders are not being charged, or the charges are dropped without trial, we must consider the impact upon the effectiveness of regulatory measures that primarily rely on convictions and charges...”
- “... the risks of detection and the speed of punishment are significant deterrents to offending. If, in spite of increased reports to police, there are fewer prosecutions for child sexual assault, then what impact might this have on

⁹ *Interim Report of Royal Commission into Institutional Responses to Child Sexual Abuse*, Vol. 1, at p. 51, 30 June 2014, available at http://www.childabuseroyalcommission.gov.au/about-us/our-reports/interim-report-volume-1-final-020714_lr_web.

¹⁰ *Id.* at p. 140,

¹¹ *Id.* at pp. 50-51.

¹² *Id.* at p. 154.

deterrence? ... it is unlikely that it could be positive.”¹³

Survivors do not find the increase in barriers to justice for these crimes surprising. For decades legislative changes purporting to increase child protection have also delivered a growing number of powerful loopholes and protections against prosecution for offenders. Proper investigation of these crimes, achieving an acceptable conviction rate, and supporting child protection measures are also impeded by consistent lack of co-operation with law enforcement by institutions, and a widespread culture of institutional protection and cover-up. This is not an issue as yet discussed or addressed in public by the Royal Commission, except through details of individual cases examined via public hearings.

One such hearing did touch on the broader issue of cover-up when Cardinal George Pell was asked for the Vatican’s response to the Royal Commission’s request for the Vatican’s files about Australian cases.¹⁴ Pell had left Australia to take up a newly created senior position at the Vatican, and was only willing to give evidence via video link. Selected files will be made available, but overall the Vatican’s response was that such a request was “unreasonable” because those files represent “the internal workings of a sovereign state”.¹⁵

This response also appears to ignore the concern expressed by this Committee in the concluding observations on the Initial Report of the Holy See about previous refusals to provide access to these files, and the reminder that Article 9 of the Convention requires States parties to “afford one another the greatest measure of assistance” including “the supply of all evidence at their disposal”.¹⁶

Perhaps most concerning of all in light of the consistent obstruction of justice by institutions which protect and enable child sexual violence, is the lack of specific laws against covering up or enabling such offences, or in states where such a law already exists, a lack of enforcement. The treatment of whistleblowers is also concerning. In most abusive institutions, those who stand up for the right of children not to be subjected to sexual violence on an ongoing basis have been and continue to be subjected to threats and retaliation. In the case of whistleblower police detective Peter Fox, he has been the subject of harassment and intimidation not just by police officers and former officers, but also by the New South Wales Government in the form of an inquiry which appeared far more interested in finding minor details with which to discredit and undermine him, than with the serious crimes of clergy and church officials.¹⁷

¹³ Speech by The Hon. Justice Peter McClellan AM, Chair, Royal Commission into Institutional Responses to Child Sexual Abuse to 14th International Criminal Law Conference 2014, Melbourne, 9 Oct. 2014, available at <http://www.childabuseroyalcommission.gov.au/media-centre/speeches/14th-international-criminal-law-congress-2014>.

¹⁴ Michael Salter, *Moral responsibility a drive-by victim of Pell’s view of the church*, The Conversation, 22 Aug. 2014, available at <http://theconversation.com/moral-responsibility-a-drive-by-victim-of-pells-view-of-the-church-30613>.

¹⁵ *Vatican refuses to hand over files on accused pedophile priests*, The Sydney Morning Herald, 21 Aug. 2014, available at <http://www.smh.com.au/national/vatican-refuses-to-hand-over-files-on-accused-pedophile-priests-20140821-106zg5.html>.

¹⁶ See [Committee Against Torture, Concluding Observations on the Initial Report of the Holy See, CAT/C/VAT/CO/1 \(17 June 2014\)](#) at para. 12.

¹⁷ Tahmina Ansari, *Special Commission of Inquiry clears police, finds whistleblower Peter Fox ‘not credible’ over child abuse cover-up claims*, ABC News, 30 May 2014, available at <http://www.abc.net.au/news/2014-05-30/hunter-child-abuse-special-commission-of-inquiry-clears-police/5488942>.

B. Inadequacy of Australia's Implementation of the Convention

Australia's current Royal Commission is to date the most comprehensive and well-funded national investigation into widespread and systematic rape and sexual violence against children within institutions. However, such an inquiry is not in itself adequate to meet Australia's obligations under the Convention. It is merely the information-gathering exercise necessary to inform and shape the changes needed to meet Australia's obligations to protect against and provide redress for the systematic sexual violence and cover-up within the Catholic Church and other institutions.

Australia's record of protecting children against such violations, and providing redress where protection has failed is, as the Royal Commission's work continues to reveal, miserably inadequate. Survivors are concerned that an apparent unwillingness of Australia's legislators and government officials to meaningfully do what has to be done to protect the most vulnerable in Australian society against destructive sexual exploitation by adults in positions of authority over them will not change just because a Royal Commission has been conducted. Those who choose to respect and protect the political clout and wealth of religious other institutions and offenders, sacrificing children's safety, will not be swayed by a Royal Commission report.

Australia's current Government has demonstrated in its first year of office a willingness to ignore the rights of the vulnerable in many areas. Many survivors worry this Government has no desire to deliver on the promises of real change made when the previous Government announced the Royal Commission. Many survivors whose suffering has already been investigated by earlier inquiries are still lobbying for the implementation of vital recommendations from a decade or more previously. The Royal Commission is currently preparing a summary of the record of implementation, or lack thereof, of previous inquiries.

Far too many Australian victims have committed suicide or died without ever seeing justice or redress. Many are fast approaching the end of a shortened life span in poverty and ill-health, with the prospect of being re-traumatized in aged care institutions run by the same organisations that stole their childhood, derailed their lives, and have never faced accountability or helped those they have harmed.

III. Suggested Recommendations

On behalf of Australian survivors and with the aim of ending rape and sexual violence against children and bring healing to those who have already suffered, we respectfully ask the Committee to recommend:

- That the Australian Government immediately provide survivors of child rape and sexual violence with counseling and other recovery services, including access to emergency financial assistance, to continue up until the full implementation of the Royal Commission into Institutional Responses to Child Sexual Abuse's redress recommendations (expected to be released in June 2015);
- That the Australian Government expeditiously and fully implement the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse when they are issued.