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When the mission system is the bottom line

The governance of
Catholic schools in
Australia

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Foreword

What is governance?

The Governance Institute of Australia provides a helpful and concise descriptor:

“Governance encompasses the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance.”

But is this descriptor enough? It is a descriptor that focuses on corporate governance and while such a context has much to offer those who govern Church organisations, we cannot rely on the corporate sector alone. The increased intentional focus on governance within Catholic Church organisations over the past decade, and the last few years in particular, has seen a flurry of activity, with many Catholic education authorities amending or introducing new governance arrangements. These new governance structures have drawn heavily on corporate governance practice and it is timely for us to consider whether our amended or new structures will serve us well into the future.

In addressing this issue there is some value in considering the range of governance arrangements currently in place across Catholic education in Australia. In this unique piece of work that she has undertaken for the La Salle Academy, Dr Maureen Cleary has identified twelve different governance structures or types across the 1 852 Catholic schools in the country. Each particular structure is a legitimate response to the civil and canonical requirements that govern the conduct of a Catholic school and each has been constructed so as to respond to the particular context in which they operate.

These relatively new or recently nuanced governance arrangements are not the ‘be all and end all’. Every structure has its limitations and governance is an organic not a static activity. It is important that governors fully understand the governance structure and arrangements they have in place and within which they operate. It is also important for governors to be cognisant of other possible ways of governing, hence this publication. The publication is unique because this task has not previously appeared in one relatively concise publication.

What is offered in this publication is an attempt to describe the current scenario of governance of Catholic schools in Australia, along with the relevant civil and ecclesial issues that shape and influence governance. We hope it offers the reader an opportunity to understand how their organisation is positioned within the fabric of Catholic education governance, and to consider the issues that will continue to shape their practice of governance. Most particularly, we hope this paper assists the reader to reflect on the effectiveness of their governance with attention to mission integrity.



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Introduction

For some time, Catholic Churchⁱ authorities and groups have been struggling with a way to explain Church governance when this form of governance is embedded in civil societyⁱⁱ. The dynamics of Church governance can perplex those beyond the Church, not to mention many of those within the Church. This search has been exasperated by the findings of the Royal Commission into Institutional Responses to Child Sexual Abuseⁱⁱⁱ. The emerging explanation seems to start with the law (canon and civil), postulates ‘good governance principles’ and progresses to find a justification of these principles in theology. The problem with this approach is that the ‘good governance principles’ are predominantly drawn from research and experience of the for-profit sector which has a ‘bottom line’ different from organisations in nonprofit sector.

This paper explains how situating Church governance organisationally in the nonprofit sector automatically means that the religious meaning system is the ‘bottom line’. This allows for an exploration of how mission and authority are intrinsically linked in the structuring of governance of Catholic organisations, especially Catholic schools^{iv}.

NONPROFIT SECTOR GOVERNANCE

Governance is a process in formal^v organisations which encompasses a number of activities, for example, directing, controlling and being accountable. Some of those activities may appear to be common to the governance of any type of organisation, however, the commonality is largely in nomenclature only. Being a process, governance is a continuous action, system, operation or series of changes taking place *in a particular manner*. The manner in which the governance process is applied depends on the organisation’s sector identity. Like most Western democracies,

organisations in Australia are divided into three sectors: the public or governmental sector which is ultimately responsible through a minister to the parliament; the for-profit or business sector which makes a profit from its activities to give owners (shareholders) a return on the money they have invested; the nonprofit sector is formed and maintained by groups of people (members) committed to a values-based purpose without seeking a profit. The ‘particular manner’ for each of these sectors is intrinsically different. No one sector is better than another sector, each is necessary and complementary for the creation of a robust civil society. Their ‘particular manner’ can be illustrated by the fact that each has a different bottom line in decision-making.

Governmental organisations are owned by the public and administered by the prevailing elected political party(ies), therefore, their bottom line centres on public service and political advantage. The creation of profit for shareholders is an uncontested bottom line in for-profit organisations. Nonprofit organisations exist to further a purpose in society based on a particular philosophy or set of values.

From a civil law perspective there is no fundamental difference in governing a Catholic organisation and governing other corporate entities. The legal and fiduciary duties are the same.

The governance difference is found in the fact that it is a religious organisation within the Catholic Church and therefore has a highly developed ideology and set of values. In this paper, the bottom line for the governance of Catholic schooling is the integrity of its religious meaning system. For brevity’s sake, this will be often be called the mission. The link between governance and mission in a Catholic organisation is that some person or group of people at a governance level has to authorise the interpretation of the mission and its implementation.

The starting point for this paper is to consider where Catholic schools are situated as a nonprofit sector organisation.

ORGANISATIONAL GENEALOGY OF CATHOLIC SCHOOLS IN AUSTRALIA

Starting at the school level we know that *Catholic schools* are a subset of an organisation called the *Catholic Church* which is a subset of other group of organisations called *religious organisations* which are usually a subset of another group called *charities* which are a subset of a sector called the *nonprofit sector*. These multiple identities have implications with regard to how governance is defined and applied at each level of this genealogy.

A nonprofit organisation

Nonprofit organisations in Australia make a significant contribution to the social capital of our society. They educate the young and the old, provide opportunities for worship, encourage collective action and protect freedom, recognise, create and preserve beauty, improve an individual’s physical, emotional and spiritual well-being and set and maintain standards within an occupation or profession.

The distinguishing characteristic of nonprofits is the centrality of values (Lyons, 2001). Most nonprofits have been started by people who share certain values which may be part of their religious belief system. These ‘informing’ values are the feature that attracts new members and are the glue that holds the organisation together. The ‘informing’ values are self-evident in the codification of the organisation’s purpose as defined in the constitution, the mission and/or vision statement.

Some characteristics of nonprofit organisations and their governance are:

- Nonprofit organisations are independent of government, they are not defined or controlled by ministers or government officers. However, the shift of government

funding to nonprofits from grants to contracts, accompanied by increased performance monitoring, regulation and inspection has the potential to blur the distinction between nonprofit and governmental. This distinction blurring is significant for those governing Catholic schools because 'at all levels where decisions about funding and policy get made, much of the generative work of governance for government-funded nonprofits has been done outside any one agency's board room' (Renz, 2012). Religious schools report voluminously to the relevant government department as a condition for receiving financial assistance but these reports are confidential and cannot be used as accountability instruments outside this arrangement.

Systemic schools that are part of a Church-run system are governed by the diocesan bishop and operated a little like their state school counterparts in that only limited autonomy is given to each school. These schools might have a school council which is advisory to the Principal in some specific areas, for example, parent participation, fund-raising and approval of local policies. Non-systemic or independent Catholic schools are mostly incorporated nonprofit companies with boards appointed by the school's relevant Church authority, usually a religious institute.

- Nonprofits should generate a surplus but that is not their main purpose. They are explicitly prohibited from distributing a profit to members if the organisation is wound up.
- Most nonprofits are democratically controlled by their members. The members elect representatives to the board that governs the organisation on their behalf. Therefore, these elected members are accountable to the full membership. Religious Institutes^{vi} are democratically controlled by their members. Their elected trustees are accountable to the full membership. However, in the hierarchy of the Church, a bishop is not elected by Church members and has few processes of accountability to them. The Pope is elected by a group of men whom his predecessors have appointed. This difference in the role of members in the election or appointment of the various governing Church groups

has implications for accountability, access to decision-making, governance capacity, gender equality and term limits.

- Nonprofits can generally be distinguished as member-serving organisations or public serving organisations. Most religious organisations are member-serving organisations because most of their members formally belong to that religion. The Church serves its members by organising national, diocesan and parish structures and services. It is also a public serving organisation in its provision of education, health, aged care and welfare services to the wider public. Catholic schooling spans both categories because it is both member-serving and public-serving. In its foundation, Catholic schooling was exclusively member-serving and the viability of the Church was linked to this exclusivity. Over time, that situation has changed. The percentage of non-members of the Church accessing Catholic schooling continues to increase (NCEC, 2019). To ensure the viability of this schooling system, admitting more non-Catholic students is an accepted change. However, what has not changed across all the Church's public serving organisations is the importance of the service being delivered *in a particular Church manner*. The relevant Church authority establishes internal systems of accountability for their member and public-serving organisations. However, the accountability systems are rarely two-way.
- About half of all nonprofit organisations have established a separate legal form through a process of incorporation. This form largely includes those that are a company limited by guarantee, an incorporated association, a cooperative or established by an Act of Parliament. In the governance of Catholic schools, the majority of those sponsored by a religious institute or a Ministerial PJP^{vii} are incorporated as a Company Limited by Guarantee. This has been an increasing reality for these governing groups over the last 45 years. More recently, five dioceses have moved to this legal form for Catholic schooling. The majority of diocesan Catholic education systems are not separately incorporated but

they receive their legal protection from their particular Diocesan Church which is incorporated.

A charitable organisation

According to the Australian Charities and Not-for-profit Commission (ACNC) Australian charities have a strong history of helping vulnerable and disadvantaged people in our society. Charities and other nonprofits provided most social services in Australia until the Second World War. These organisations were mainly religious institutions that worked towards relieving poverty and suffering.

Today, Australia's charity sector is large and diverse. It ranges from small religious charities to large international humanitarian agencies. Nearly half of all registered charities have social and community welfare as their main purpose, with religious charities making up about 22 per cent of these. In 2017, Australian charities made \$146.1 billion in revenue, including \$7 billion in government grants and \$9.9 billion in donations. The sector employs more than 1.3 million paid staff and has 3.3 million volunteers. Approximately 17 per cent of charities identify their main purpose as education. Thirty per cent of all charities reported their main activity was religious^{viii}.

The diversification of the charitable sector created structural inequalities especially with regard to accountability, taxation obligations and exemptions. Up to 2013, there was no governmental accountability or registration mechanism for all charities. This was rectified with the establishment of the ACNC which is responsible for registering (and de-registering) charities and nonprofit organisations, for ensuring compliance with Australian law and for keeping a public register of organisations. Schools which are classified as charities must abide by the five governance standards which are legislated in the *Australian Charities and Not-for-profits Commission Regulation 2013 Div 45*^{ix} and report to the ACNC on an annual basis. These Activity and Financial Reports are available on the ACNC website. This listing is the beginning of an accountability system to stakeholders.

The majority of Catholic school systems are registered as charities. The fundamental limitation of applying the ACNC Governance Standards

to organisations with complex and diverse governance arrangements such as Catholic schools is that these standards assume that charities have a discrete ‘membership’ to whom those in governance and management are accountable. There is no other ACNC Standard that recognises the schools’ accountability to any other stakeholder, especially parents. For this reason, some Church governing groups have used the Good Governance Principles^x for nonprofit organisation from the Australian Institute of Company Directors (AICD) because these Principles recognise the importance of accountability to a range of stakeholders, and explicitly focus on the board’s role in driving performance. Some regard these types of standards as governing by principle. They are a useful tool, but not an end in themselves. They are useful for those who are new to the governing role to assist their understanding of the fundamentals of the role. Being standards, they are not prescriptive but generic and meant to be adapted to the circumstances of each school system or school. They do not include a principle or standard for the governance of the meaning system.

At best, the AICD Standards include a standard called ‘Culture and Ethics’.

Some boards become so fixated in designing processes to demonstrate that they are meeting standards, that they fail to question the extent to which these processes assist better school governance. This approach inevitably results in ‘counting things’. It has become a conundrum for boards of Catholic organisations to simultaneously evaluate the mission

as a standard while recognising that there are many aspects of mission that cannot be quantified. This dilemma comes into sharp focus when the organisational expectation is that mission is not only operationalised with visibility and vitality but is foundational to decision-making.

A religious organisation

Organizations that serve religious purposes are among the oldest ways in which people have come together for cooperative efforts. From loosely structured local worship groups to multinational denominational systems, religious organizations have taken many forms and served a wide variety of needs for millions of people. Many of these organizations came into existence because of the heroic efforts of missionaries, lay and ordained clergy, and other leaders who worked to bring their faith into new regions of the world. Over time, additional forms were created, including seminaries to provide educated ministers for local congregations, hospitals to provide health care to the sick, orphanages to provide shelter and care for children without parents, schools to educate children and young adults, and social service agencies to serve the poor and needy in many communities. (Holland & Hester, 2000: xii)

In Australia, many nonprofit human services organisations – education, health, aged care and welfare – have their origins in a particular church or religious denomination and remain part of that particular church or denominational structure. Religion is a major motivator of nonprofit activity. While many church organisations were formed to serve their own membership,

they have become an important part of the wider society, in both the services they provide and their relationship to government and other nonprofit organisations. They are regulated and subsidised, often quite heavily, by government.

Fundamental changes in attitudes about the place of religion in Western society and the increasing secularisation of that society raise questions about whether or not religious organisations can continue to fulfil their roles within society. The effectiveness of a religious organisation is indicated by the degree to which its religious meaning system has organisational integrity at every level of the organisation. Organisational integrity refers to the quality or state of completeness of the religious meaning system between the people and structures of the organisation.

Meaning systems are part of the core culture of every group.

Group norms, values, interests, behaviours and customs make no sense to an outsider until these meaning systems are understood because they define the why and wherefores of the group life. These meaning systems are incorporated into a comprehensive thought system, or interpretation of the world, that makes sense to group members and is accepted as the ultimate explanation of reality. (Ebaugh, 1993:60).

Therefore, religious meaning systems require that there are ‘insiders’ who affirm, explain and authorise its authenticity and validity. These ‘insiders’ or authorising personnel are assigned a formal role and usually

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a specific title which indicates they have a position of authority within the organisation. The form and legality of the authorising personnel in a religious organisation varies greatly, as will be demonstrated in this paper.

The human interpretation of the meaning system in a religious organisation can be varied arising from the individual's own particular environment and from their interaction with other social systems outside the religious organisation. The degree to which this interaction affects the religious organisation depends on the type of boundaries that exist between the religious organisation and other social systems.

A religious organisation which primarily provides priestly and sacred services for its members (member-serving) are likely to have definite boundaries between it and other social systems. Religious organisations which provide services for people who do not require religious affiliation (public-serving) to receive service are likely to have more permeable boundaries. The fact that Catholic schools span both of these service categories can raise different interpretations of the religious meaning system which can lead to conflict both at a governance and management level.

If the religious meaning system is the bottom line in a religious organisation then it is not surprising that there can be confusion when applying governance standards in these organisations. Frequently board members consider the religious values, theology and spirituality as part of the 'soft' aspects of governing while finances, legal issues and compliance are the 'hard' aspects. This juxtaposition is not surprising when western society tends to value profitability over symbolic ends. Wittberg (2007) comments:

Religious nonprofits... have always claimed to operate out of a different, "higher" set of values. Their hiring and promotion criteria, their daily decision-making, and, indeed, their final reasons d'être are said to flow, not from rational efficiency, but from their underlying mission.

Bordieu, linking symbolic and economic ends, says that the reality of production i.e the direction of activity to an exclusively economic end, means that the most sacred activities are rendered negatively as being symbolic 'that is as lacking in

concrete or material effect, in short, gratuitous, that is, disinterested but also useless' Bordieu, (1977:177). He further proposes that the unconscious acceptance of strictly economic interests has defined symbolic interests in oppositional terms. A challenge for those responsible for the governance of Catholic schooling is that the Catholic Church is a highly symbolic organisation but the schooling system depends on external sources of funding, must demonstrate compliance with regulation and is bound to exercise legal and fiduciary duty. This does not mean that that these core aspects of governing a nonprofit organisation take second place to the mission; the two need to be held together as an integrated reality.

Ensuring that the religious meaning system of a particular tradition is the bottom line in the governance of a religious organisation demands that the legitimacy of religious meaning is accepted as the fundamental aspect in decision-making at all governance and management levels. It is the only bottom line that actually matters. If governance processes in Catholic organisations are predominantly drawn from the for-profit sector then mission, and consequently, fidelity to the gospel nature or core identity of the Church, will dissipate.

A Catholic Church organisation

The extraordinary success of Catholic education did not occur by chance: it is the fruit of the sacrifice of past generations and divine grace. We are heirs to a rich legacy, borne out of sincere belief, inspiring vision and unwavering resolve (ACBC, 2021: 2)

Church institutions and organisations contain the greatest diversity of organisational form, types of services, sponsoring arrangements, sizes and financial arrangements of any national organisation within the nonprofit sector in Australia. While there is extensive ecclesial literature and research on many aspects of the universal Catholic Church and the Australian Church there has been little interest in social research into the Church as an organisation, including its governance and management.

This inattention to the structures of religion is due to a number of factors; the most important being the general lack of interest in religion by academic social scientists. Most of the work that has been done focuses on Church history, the sociology of belief or the

social and political impact of religious movements. Although academic institutions which are conducted by religious bodies have been marginally better in their research into these areas, their prime area of research activity has been focused on theological and canonical issues. Fundamental changes in attitudes about the place of religion in Australian society (Monsma & Soper, 1997) raise questions about the place of religion in society generally and whether or not religious organisations can continue to fulfil their role within that society.

British sociologist, Anthony Giddens, in his theory of structuration (Giddens, 1986) provides the most useful framework for explaining the dominance of 'signification' or symbolism in the structuring of religious organisations. His theory can provide an explanation of how:

- large, old, continuous organisations, like the Catholic Church, can be reproduced in many settings with a uniform symbolic interpretation
- the symbolic system can be dominant within a multi-social system arrangement
- organisations with highly developed codes of signification can form, sustain and reform encounters both within the organisation and outside its organisational boundaries
- the role of key decision-makers, while critical to structuring, is not absolute because the structure in which they exist has properties which are beyond the control of individual actors
- these organisations reproduce the wider organisational structure in which they are embedded
- relationships become stabilised in institutional form
- Catholic Church organisations, as a group of nonprofits, exist within a number of social systems: domestic (Catholic Church as a denominational religion); communal (variety of Public Juridic Persons^{xi} which sponsor the services); economic (corporate nature of services); political (judicial and legislative arrangements of church and state); intellectual (professional workers, board members and professional accreditation and associations).

Understanding how to hold different social systems together in the governance of Catholic organisations 'as an integrated reality' is assisted by the way Giddens regards 'rules' as one of the chief determinants in structuring an organisation. Social 'rules' are 'the modes whereby transformative relations are actually incorporated into the production and reproduction of social practices (Giddens, 1996:18). Hence:

The meaning system is one of the 'rules' by which Catholic Human Service Organisations are structured and reproduced over time. ...the key symbolic elements of the system (e.g. myth, ritual, artefacts, ethos and world view) require human agents to enact and interpret these and other organisational activities in a particular religious framework. In and through the organisation's activities these agents reproduce the conditions that make the activity possible because they are continually interpreting actions and activities in the organisation as 'acceptable' or 'not acceptable'. In this way the interpretation of the meaning system becomes a 'rule' (Cleary: 2007:259).

In the Catholic tradition, interpretation of the symbolic elements of that tradition is intrinsically linked to the reality of 'faith' or religious belief. Geertz (1985: 27) explains religious belief and links it to religious authority:

Religious belief involves a prior acceptance of authority that gives the experience 'an aura of factuality'. It becomes a particular way of looking at life, a particular manner of the world called a religious perspective. It mediates and defines the scope of the interpretation of symbols i.e myths, rituals and artefacts, it gives a sense of factuality and prioritises the order within the world view.

Discussing a theology of faith, Lennan (2004:182) says:

It is not possible...to do justice to faith, or its claims to the truth, without taking into account how participants themselves interpret their religious beliefs, symbols and rituals....Faith is always richer and more complex than the mere recognition of facts.

If the truth of Christian faith that the church proclaims – the Tradition – is inseparable from the mystery of God revealed in Jesus Christ and made present in every age through the Spirit, who forms the church as a communion of believers, then the truth is neither purely subjective nor merely objective.

Each Catholic organisation belongs to a cohesive organisational structure of the Church which is local, national and international in form and which is formalised in the Code of Canon Law^{xii}, one of the most comprehensive and defined authority structures of all world religions. There are some distinct differences between the traditions from which canon and civil law are derived. Canon law is not as detailed as the civil law arising from a common law tradition. Canon law provides a set of principles or broadly worded statements. Precedent is not as important in canon law as it is in common law. More flexibility exists in canon law to interpret the canons and apply them to a particular situation. Canon law does not legislate for every circumstance, it allows local entities to make their own decisions and does not legislate for activities such as health, aged care, education and social services.

Catholic organisations were subject to the social and political realities which have shaped other organisations and services in Australia. The activity of organising these services was defined by a world view and a symbolic system of language, artefacts, rituals and ceremonies. This symbolic system both created and recreated a religious meaning system that gave these Catholic organisations their particular identity.

The way in which the symbolic system is constructed within such a comprehensive organisational structure has been a significant aspect of the Church throughout its long history. During the history of the Church's human service organisations (health, aged care, welfare and education) in Australia, the nature, size, complexity and types of services offered by these organisations have altered considerably. The first 'official' Catholic school was established by Fr. John Joseph Therry in 1820 and operational by January 1821 (ACBC, 2021:3). The Sisters of Charity, the first religious institute to be established in Australia, were providing religious instruction and care to convict women by January 1839 in government hospitals, orphanages, schools and gaol^{xiii}.

For the first 140 years, up to the time of the Second Vatican Council,^{xiv} these organisations existed with a particular Church identity, which gave rise to organisational forms that were characterised by uniformity and

An important aspect of this new type of Church governance structure is that it provides a unique opportunity for a new level of lay participation in the governance of the Church. The Ministerial PJP structure enables members of the laity to be appointed as canonical stewards, a role formerly open only to members of the clergy and Religious Institutes.

universality in philosophy, governance and management structures. The process of managing these Church organisations supported both the identity of the organisation and the Church. These organisations were embedded in the wider organisational framework of the Church and, as such, reproduced the hierarchical structure of the Church in their process of institutionalisation (Meyer & Rowan, 1991). This embeddedness also reproduced a symbolic system which bound the activities of organising the services as well as the identity of the members of sponsoring groups^{xv} who owned, managed and worked for these organisations (Nygren & Ukeritis, 1993).

The sponsors' influence on the organisations was all pervasive, irrespective of whether they made up the entire workforce or only a significant part of it. Membership within the sponsoring group was

defined by the Church's law, moral reputation, educational achievement, health (physical and emotional) and financial status (Ebaugh, 1993). These conditions, together with a closed system of training, ensured a continuity of the sponsor's meaning system within a conservative and stable Church. Many of the uniforming determinants of this total institutional setting (Goffman, 1961) were transferred to the human services whose sponsoring managers and many workers had experienced such a system of formation.

The structural arrangements of Catholic organisations remained without major alteration until the 1960s. While external political and social forces, prior to this time, did affect structure and management practice, the dominant Church meaning system was able to accommodate change without structural reform. The decades since the Second Vatican Council have been times of dramatic change for the Church precipitated by both internal and external factors (Campion, 1987; Seidler & Meyer, 1989; O'Farrell, 1992). The collapse of traditional religions and values since the 1960s, together with the turmoil of the Church world-wide following the Second Vatican Council, has caused a shift to a pluralism of religious values and theological thought in the Church (Dulles, 1974; Burns, 1994; Monsma & Soper, 1997). Since the 1960s the western Church has experienced a continuous decline in membership, especially in the groups who own or manage its education services (Ebaugh, 1993; Nygren & Ukeritis, 1993; NCLS, 2019).

These dramatic events in the Church's history, both locally and internationally, have resulted in an unprecedented period of discontinuity in Catholic education organisations. The most obvious changes have occurred in relation to governance structures, the processes by which the religious meaning system is sustained, the transfer of most management positions from members of the sponsoring groups to laity and lay people^{xvi}, the organisations' increasing reliance on government funding and compliance requirements and the emergence of laity participation in new forms of Church governance.

The period of discontinuity in Catholic education has not led to a systemic collapse. As this paper demonstrates, its governance structures have become

more open and transparent, lay leadership is more professionalised and compliance and accountability are considered a major aspect of its governance systems. There has been a corresponding development in ensuring that educational services are delivered in a particular manner and that the religious meaning system is articulated in word and action. It has been the commitment to mission that has held Catholic education together in times of great change and enabled it to continue its 'rich legacy, borne out of sincere belief, inspiring vision and unwavering resolve'.

A SYSTEM BASED ON RELIGIOUS AUTHORITY

Those people who come from a corporate to a Church governance context and have limited experience of working in Church organisations often find that their taken for granted understanding of authority is challenged. This is not only because Church organisations must be compliant with two systems of law – canonical and civil – but because the basis of Church governance is theological not juridical, as explained by Thiel (1995: 57).

How authority dwells in the Church, how it is exercised, and how it is evaluated and questioned are in large measure a matter of determining how we are responsible to the Spirit who enables our belief and our action. This theological orientation to the issue of authority lends perspective to any specific concerns we might have about what belief, what teaching, what life, or what action is truly authoritative in and for the Church.

This section attempts to provide a framework for understanding religious authority.

Authority to govern within the Church, called apostolic authority, is understood to be derived directly from the founder, Jesus Christ. Acceptance of the reality of apostolic authority is a central tenet of the Church and the willingness of its members to accept this tenet is based on faith. Catholic teaching states:

...that the Pope and bishops receive their authority ultimately from Christ, that their ordination has conferred on them a special grace of the Holy Spirit for their ministry, and that its purpose is to promote the good order and holiness of the Church. (Sullivan, 1997:21)

It is popularly thought that all apostolic authority resides exclusively in the Pope, who delegates it to other bishops. Theologically, the authority rests with the entire group of bishops in union with the Pope. Neither the Pope, nor any individual bishop, nor small group of bishops could claim to possess the fullness of apostolic authority, apart from the entire college of bishops. What is unique to the Pope is that he can act on behalf of this college, without being obliged to consult it. While the relationship between the Pope and the bishops is collegial, the Church has also a hierarchical and primal nature (Stagaman, 1999; Buckley, 1998).

This dualism can give rise to conflict and tension. Such conflicts have been part of the discourse of the Church for centuries (McBrien, 1980:830).

The tension inevitably arises from the difference in focus of the roles of Pope and bishop. A bishop in an individual diocese exercises his judgement according to his knowledge and insights as to what is best for the local Church. Hopefully, this is in consultation with those baptised Catholics who belong to his diocese. The Pope exercises his leadership over about 9,000 dioceses^{xvii} in the world. He is expected to implement what he believes to be essential and/or important for the unity of all the dioceses even though he does not legislate for any diocese directly and cannot tell a bishop how to conduct the diocese. However, the Pope can remove a bishop. The primatial nature of the role of the Papacy is intended to ensure the unity of the Church. The tension between the local and the universal Church, including tens of thousands of religious institutes, is exacerbated by the increasing diversity within the local Church and the constant need to reformulate what unity within diversity actually means.

What makes the Church different from civil structures is that its most basic understanding of authority is not juridical but theological. Authority in the Church is first and foremost a power that derives from a relationship with God (Thiel, 1995:55). Relating the degrees of authority with the ultimate 'goodness' of God inevitably links understandings of goodness both with formal authority roles in the Church and by default with the person occupying that role. Authority, in this religious context, is sometimes given to an individual or a group, not as a result of any special competence but in virtue of the prescribed roles.

The organisational form of the Church with its distinct type of religious authority embeds Catholic schools and education systems in the construction of a particular religious meaning intrinsic to the mission of the Church. This Church governs in a particular way to protect the integrity, authenticity and effectiveness of its mission with a view to ensuring its sustainability.

In the main, Church leaders have enjoyed harmonious working relationships yet throughout the Church's history there have been numerous conflicts throughout the world between members of religious institutes, some clergy and the hierarchical structure of the Church. These disputes have included the silencing of individuals from teaching or publishing in matters of theology; the intervention of papal and episcopal authority in governance matters of religious institutes and the removal of members of the clergy or religious institutes from elected or public office. Many of these disputes illustrate the tensions and conflicts which can arise in an organisation which relies so heavily on the personal commitment of its members and a complex structure to control and regulate that commitment.

For centuries in the Catholic Church clergy, members of religious institutes and the laity have

...sought to dedicate their lives to the salvation of their own souls and to the salvation of others by blending an intense pursuit of personal holiness with a highly active apostolic service (Ebaugh, 1993:18).

Within the 'intense pursuit of personal holiness' it is inevitable that such complex organisational arrangements can inhibit individual 'pursuit'. Conversely, some of those who exercise authority in this structure may believe they are the guardians of that structure and substitutes for God whom the structure represents.

Discussing such authority figures Stagaman (1999:28) says:

Authority figures become substitutes for God, believed to possess authority directly from God with no reference to community purposes and values and responsible to no one in the exercise of that authority.

More recently, the Royal Commission into Institutional Responses to Child Sexual Abuse (2017) made a direct link between the hierarchical governance structure of the Church and the Church's lack of accountability. The Commission's final report points out that when the powers of governance are combined in the person of a Pope, a diocesan bishop or a leader of a Religious Institute then these Church authorities are not subject to adequate checks and balances, nor are they accountable to any other body for their decision-making.

Pope Francis in his 'Letter to the People of God in Chile' (2018), spelt out with great clarity what can happen when the People of God are reduced to 'small elites':

It is impossible to think of a conversion of our activity as a church that does not include the active participation of all members of God's people. Indeed, whenever we have tried to replace, or silence, or ignore, or reduce the People of God to small elites, we end up creating communities, projects, theological approaches, spiritualities and structures without roots, without memory, without faces, without bodies and ultimately, without lives. This is clearly seen in a peculiar way of understanding the Church's authority, one common in many communities where sexual abuse and the abuse of power and conscience have occurred (2018).

The hierarchical dimensions of the Church are obviously present in so many of its structures which can lead to a tendency 'to explain the exercise of authority solely in political terms' (Thiel, 1995:54), notwithstanding the fact that many Religious Institute leaders, bishops and clergy have striven to avoid this tendency. This tendency need not dominate if the 'author-ity' of governance is seen as the capacity to 'author' decisions which can fulfil the mission and purpose of the group being governed. Being an author assumes creativity, life, originality and new life; a creative collaboration between those governing and the life of the Spirit.

The organisational form of the Church with its distinct type of religious authority embeds Catholic schools and education systems in the construction of a particular religious meaning intrinsic to the Mission of the Church. The Church governs in a particular way to protect the integrity, authenticity and effectiveness of its Mission with a view to ensuring the Mission's life-giving contribution to the world. The mission of every Catholic organisation draws its mission directly from the Church's Mission.

THE CHURCH'S MISSION

The most comprehensive symbol for God's plan with creation is the biblical phrase kingdom of God. The kingdom aims at transforming the whole of creation into its eternal glory, and the church must be seen and understood in the context of this divine intentionality. The church's essence and mission make sense only in this setting. Its mission is to reveal through the ages the hidden plan of God to lead all humankind toward its final destiny. The church must see itself entirely in the service of this divine plan meant for the salvation of all creation (Fuellenbach, 2001:223).

The Catholic Church's mission is to proclaim the 'good news' of the Kingdom of God and to be a sign of that Kingdom in the world by bringing about the full humanity of all people through education, through a commitment to justice and the integrity of all creation, through care of the sick and liberation of the poor. The kingdom demands the transformation of all human reality, and the Church must be an 'agent' of this transformation. This agency is further expressed by Verkuyl (1993: 73):

The keys of the Kingdom have been given to the Church. It does not fulfil its

mandate by relinquishing those keys but rather by using them to open up the avenues of approach to the Kingdom for all peoples and all population groups at every level of human society.

The most recent exploration of Church governance in Australia can be found in the document called *The Light from the Southern Cross, Promoting Co-Responsible Governance* in the Catholic Church in Australia. It makes the fundamental link between an understanding of the Church and the foundational person of Jesus Christ:

The Gospel of Jesus Christ, therefore, is the source for the theology, the spirituality, and the ecclesiology of the Church, all of which seek to form in the Church an ever-deepening awareness of, and response to, God's ongoing presence in the whole of creation.... The Church does not exist for its own sake, but for its mission to proclaim and embody the Gospel. GRPT(2020:25)

The Church's mission while having a religious nature, includes all aspects of human life. At the heart of the Church's mission of service of all people is its belief that human persons, in deep relationship with one another as social beings, are created in the image of God. The Church's mission is to serve the kingdom, not take its place.

The Encyclical Redemptoris Missio is the first to distinguish clearly – while uniting them – the Church and the Reign of God in their pilgrimage through history: the Kingdom present in history is a broader reality than the Church; it extends beyond her boundaries to embrace the members of other religious traditions (Dupis, 1992:8).

Board members often wonder how do they know they are 'doing mission' when they are making decisions? Asking this question is the first step in 'doing mission'. The next question to ask is 'Which of the options we are considering will contribute most to the mission we profess?'

Anthony Gittins in an article called 'Disturbed by the Spirit' suggests that: *We must listen carefully, discern, and act accordingly. Listening implies an outside agent, a message, and a modification of the hearer who is informed and transformed by the message. If God asks us to listen, then God is communicating, we must be receiving, then interpreting and responding.*

Understanding mission is about self-realisation, of awakenings, of passion and of energy, of peace and joy while dealing with life's journey. Such an awakening is found in people who know the experiences of brokenness, of failures, of seeing light in darkness, of healing, of having learnt to live life again. Being in mission brings a realisation of the power of paradox, of energies regained and a deep down knowing we are in mission with Jesus. Being comfortable with the power of paradox, when engaged with the Church's mission, is perhaps the most important attribute of those who have accepted the responsibility of governing the Church's organisations. Quoting Pope Francis^{xviii}, *The Light of the Southern Cross* document, which promotes co-responsible governance in the Catholic Church in Australia, also describes this paradox:

The Spirit offers the Christian community a constant summons to renounce 'the attempt to plan and control everything to the last detail, and instead letting [the Spirit] enlighten, guide and direct us, leading us wherever he wills'. What the Spirit 'wills' is both the Church's faithfulness to Christ and its fulfilment in Christ, the one in whom God is making 'all things new' (Rev 21:5).

THE STRUCTURE AND CONSTRUCTION OF RELIGIOUS MEANING IN THE UNIVERSAL CATHOLIC CHURCH

The construction of a religious meaning within the Church and its organisations has been a significant aspect of its organisational structuring throughout its long history. No amount of theological writings or canon law knowledge can replace the fact that people are the makers and transmitters of the meaning system in a religious organisation. How these people are authorised to interpret the religious meaning in their particular 'unit' of the Catholic Church in its contemporary setting and how they are formed and developed in their interpretation has a profound effect on the applied practice of governing and managing of the various Church organisations in Australia if the mission is actually the bottom line.

All Catholic organisations exist to further the mission of the Church. Over the centuries, various groupings of people have been authorised to govern various parts of the Church in order to further the Church's mission.

It is the religious meaning system in each of these groupings of people that interprets the Church's mission in their particular context. They do this within a particular values framework, at a particular point in time, in a particular place. To ensure that a Catholic organisation has both religious integrity and is an authentic expression of the Church's mission, the religious meaning has to be systemic at all levels of decision-making, commencing at the governance level. There has to be a fundamental acceptance by all people involved in governance that the bottom line is the mission.

From a governance perspective, it is also important to pay special attention to the way authority is conceived and re-created in the Church and how the mobilisation of this authority creates and re-creates the structures of authority which legitimate the religious meaning. Religious meaning and authority are inextricably linked.

While the Church may appear to be a classical bureaucratic structure, the reality of its organisational structuring is far more complex. In describing the structure of the Catholic Church, this section illustrates the dichotomy between local and global, collegial and hierarchical, and autonomy and control. The dichotomies are compounded by the fact that the experience of the Church is not static but dynamic. The Church is enmeshed in a two thousand year history in which it has had to search out its complex relations with the world outside the Church while constantly remaking its domestic world so that it can engage the outer world yet again (Thiel, 1995:63).

This section illustrates how the activities of Church members with governance responsibilities are established through a complex system of religious authority. Because Dioceses and religious institutes are the foundation sponsors of Catholic education, it is important to understand how their governance and management structures have evolved to the present day where there are now three types of Church authorities (Public Juridic Persons) responsible for Catholic schools which are: Diocesan; Religious Institutes, parish and, more recently, Ministerial Public Juridic Person (Ministerial PJP). To add to the complexity, there are 12 different forms of governance structures in each of these three types of Church authorities. Each of these forms is identified in the following sections of this paper.

While religious institutes are structurally dependent on the universal Church, they have been able to use their relative autonomy to develop, incrementally and creatively, their governance and management structures in ways that have not been possible for the diocesan church.

The universal hierarchal structure

The two significant positions within the hierarchical structure of the Catholic Church are that of the Pope and the bishop. The Pope holds the most senior position and, traditionally, holds that position for life. A Pope is ordinarily elected on the death of the previous Pope by a group called the College of Cardinals. These cardinals are directly appointed by the Pope and usually are selected from the existing bishops. Generally, the Church has divided the physical world into geographic areas which are called dioceses. A bishop is then appointed by the Pope to govern each diocese and is called a diocesan bishop. Diocesan bishops have the autonomy to govern except in matters which Church law or a decree of the Pope has deemed otherwise.

Every diocese is divided into smaller geographic areas called parishes. Each parish is a public juridic person and has a parish priest, appointed by a diocesan bishop, who is able to exercise certain autonomous powers within his parish. The role of the Pope, bishop and parish priest can only be held by ordained ministers within the traditions of the Church. Further, these positions are predominantly limited to males who are celibate and who have completed a course of training which is internally accredited and who commit to obedience to the diocesan bishop.

Internationally this bureaucracy is administered by a centuries old structure called the Roman Curia. It consists of nearly 40 different groupings within the Vatican^{xix} which acts like a civil state's 'public service' to serve the Pope.

In the early Church where there was only a small number of dioceses, each bishop exercised full responsibility for his own diocese while remaining in union with the bishops as a whole (Buckley, 1988; Stagaman, 1999). As the number of dioceses increased, some of the responsibilities which initially belonged to the local bishops were reserved to the Pope. This structuring was seen as necessary to create order and unity in the whole. This trend to centralisation of authority received its greatest impetus in the

nineteenth century and reached its peak by the end of the 1950s. Catholic schools were formed during this period of centralisation of structure and authority. Not surprisingly, their structures reflected this centralising process of the wider Church.

For most of the second millennium, Catholics have experienced a period of centralisation of structure in the Church which was unprecedented in its 2000 years' history. The theology of Vatican II commenced a change from this centralisation of decision-making to a more collegial way of operating and making decisions specifically at the local Church level. But this direction was largely reversed during the next two pontificates. More recently, Pope Francis has strongly indicated the alignment of his pontificate with the teachings of Vatican II.

This is the Magisterium^{xx}. The Council is the Magisterium of the Church. Either you are with the Church and therefore you follow the Council, and if you don't follow the Council or you interpret it in your own way, as you desire, you do not stand with the Church....The Council must not be negotiated... No: the Council is what it is. (Pope Francis: 2021)^{xxi}

The diocesan structure

A diocese is the most common form of the local Church. Canon 369 states 'In this Church, the one, catholic and apostolic Church of Christ truly exists and functions'. The diocese is not understood in geographical terms as a sub-division of the universal Church but rather 'a community of baptised confessing the Catholic faith, sharing the sacramental life, and entrusted to the ministry of the bishop (Coriden, Green & Heintschel, 1985). The importance of this description of the diocese is that the primary function of the diocese is that of a community participating in the Church's mission.

Diocesan Church governance is derived from the institution and functions of a Bishop in the Catholic Church and is explained in Canon 375 of the Code of Canon law:

§1. By divine institution, Bishops succeed the Apostles through the Holy Spirit who is given to them. They are constituted Pastors in the Church, to be the teachers of doctrine, priests of sacred worship and ministers of governance. Canon 375

This power of governance is a sacred and personal power which is conferred by Episcopal ordination. Diocesan

bishops are entrusted with the care of a particular diocese using their power of governance. (Canon 376). In the majority of situations, the bishop holds the ultimate power for the diocese, both canonically and civilly. Canon 381 §1 identifies the limit to his canonical power and the types of civil structures formed in the diocese determine the extent of the bishop's sole responsibility in those structures. These structures might include unincorporated association; trust; corporation sole and state and territory Acts of Parliament.

With regard to the participation of lay people in the power of governance, by way of delegation from the Diocesan bishop, Canon 129 §1 & §2 may provide some direction, however, this canon is considered very controversial in the present Code. It states that:

§1. Those who are in sacred orders are, in accordance with the provision of law, capable of the power of governance, which belongs to the Church by divine institution. This power is also called the power of jurisdiction.

§2. Lay members of Christ's faithful can cooperate in the exercise of this same power in accordance with the law.

It is certain that lay persons do exercise a form of governance in the Church but the parameters of this form have not yet been fully determined. The 1917 and 1983 codes are not static documents, their canons are being constantly re-interpreted as the context for the application of the law is undergoing rapid sociological and communications change.

A diocesan bishop exercises his executive power either alone or through his Vicar General, (Canons 391, 473 and 475). The Vicar General has by virtue of his appointment the authority of the Bishop and acts within the prescriptions of the law of the Church, and within the terms of any special mandate the Bishop may give him.

Canon 473

§1. The diocesan Bishop must ensure that everything concerning the administration of the whole diocese is properly co-ordinated and is directed in the way that will best achieve the good of that portion of the people of God entrusted to his care.

A survey of the *Official Directory of the Catholic Church in Australia* illustrates that there is considerable variation in the ways that diocesan bishops organise this administration. The organising determinant is usually the size of the diocese and consequently the

limitation of its resources, both human and financial. The following description best illustrates the structure of a large metropolitan diocese called an archdiocese, but smaller dioceses adapt their structures to ensure the appropriate administration of the diocese, usually by combining diocesan functions. For example, the Vicar General role may be a separate role or might be combined with the Chancellor role. The Financial Administrator role may also be a separate role or combined with the Chancellor role. Sometimes the chief financial administration role in a diocese might be called Financial Administrator or Business Manager or Chief Financial Officer. There may not be any difference in the financial operational management of these roles but there may be a canonical difference which is significant to the diocese's financial administration .

It is not feasible for a diocesan bishop to govern alone, therefore some bishops form a group called a Diocesan Leadership Group which consists of those individuals representing diocesan structures which exist to assist the diocesan bishop in his governance responsibilities. The executive staff of the diocesan offices direct the means of carrying through the pastoral program of the diocese which the bishop has authorised in consultation with various diocesan councils. This diocesan model is a critical structure to ensure that the bishop's decisions, particularly with regard to Catholic education have been informed in a robust and professional way.

The Diocesan Leadership Group is not like many bureaucracies because its aim is to serve the mission of the Church. The Director of Catholic Schools is usually a member of the Diocesan Leadership Group because the management of Catholic schools in a diocese is a key aspect of the diocese's professional outreach (state and federal governments and funding bodies) to parents who have a diverse knowledge and/or experience of the Church and this pastoral program. This is the situation where the Director of Catholic Schools can be caught between the member-serving and public-serving Church. It can be where 'much of the generative work of governance for government-funded nonprofits has been done outside any one agency's board room [the Diocesan Leadership Group]'. (Renz: 2012).

The financial governance of a diocese is not solely invested in the bishop.

In every diocese the bishop is bound, canonically, to establish a Diocesan Finance Council (DFC) which the bishop must consult or gain consent from before completing certain financial decisions (Consultation: Canons 493, 494§1, 1263, 1277, 1287§1, 1305, 1310§2. Consent: 1292§1, 1297, 1277, 1292§2, 1281§2). The rights and obligations of these canons are spelt out in Book V of the Code of Canon Law entitled *The Temporal Goods of the Church*. It should be noted that when the bishop is required to consult the DFC or seek its consent, he acts invalidly if he does not. 'Temporal goods' is an important term used in Canon Law^{xxii}. Temporal goods include 'all nonspiritual assets, tangible or intangible, that are instrumental in fulfilling the mission of the Church; land, buildings, furnishings, liturgical vessels and vestments, works of art, vehicles, securities, cash, and other categories of real and personal property' (Beal: 2000).

The bishop must also appoint a financial administrator in accordance with Canon 494 §1. The Financial Administrator would be a member of the Diocesan Leadership Group and reports directly to the Bishop or Vicar General. The Financial Administrator's canonically mandated duties (Canon 494 §3 and §4) include administering the goods of the diocese in accordance with the DFC's plan; following the budget determined by the DFC; meeting the expenditures authorised by the bishop or his delegate; submitting to the DFC at the end of the financial year a report of receipts and expenditures. Usually, the majority of members of DFCs and Financial Administrators are professional lay people.

As the Executive Officer of the Diocesan Finance Council, the Financial Administrator is usually also the Executive Officer of the DFC, has a close working relationship with that Council and is responsible for assisting the Council in the execution of its

responsibilities in accordance with the Code of Canon Law.

While the roles of the Vicar General, the Diocesan Finance Council and the Financial Administrator are clearly mandated in Canon Law, the ability of each of these persons or group to carry out their roles substantially depends on the timeliness and accuracy of the information and the integrity of advice that is given to them.

Lucas, Slack, d'Apice (2008:157) note 'that in Australia there are a number of agencies and administrations which have been established within central diocesan administrations which are not mentioned explicitly in the *Code* but which are part of a diocesan curia', for example: Catholic Education or Schools Office; Catholic Social Services/Centacare; Catholic Development Fund.

Most bishops have established a number of diocesan councils or boards to advise the bishop on particular activities and pastoral programs. Some councils are actively engaged in the implementation of these programs. Some of these councils or boards are: Council of Priests, Diocesan Pastoral Council, Catholic Development Fund Board, Diocesan Finance Council, Catholic Social Services Board, Catholic Schools (or Office) Board. The requirement to establish some of these Councils, and their responsibilities and accountabilities are articulated in canon law.

Contemporary governance of diocesan Catholic schools systems in Australia

There are three governance types in Diocesan Catholic schools systems in Australia. Specific details of these types are found in Appendix B.

For most of the history of Catholic system schooling, the diocesan bishop has established a Diocesan Catholic Schools Board to assist him in the governance of this important but complex diocesan service. There are two variations in this type. In one

GOVERNANCE TYPE	NO. OF DIOCESES	NO. OF SCHOOLS
Diocesan Schools Governance Type 1: The unincorporated board	23	1,048
Diocesan Schools Governance Type 2: The incorporated board structure	4	498
Diocesan Schools Governance Type 3: The Trust structure	1	150
Total No:	28	1,696

variation, the board is strictly advisory to the bishop. In the second variation, the board is delegated specific areas by the bishop about which it can make decisions. In the second variation, the focus of its governance work is sometimes advisory and sometimes decision-making in line with their delegations.

The extent of the unincorporated board structure in diocesan governance and its accompanying lack of accountability has attracted increased scrutiny, particularly since the disclosures of the *Royal Commission into Institutional Responses to Child Sexual Abuse in Australia (2017)*. The Commissioners said: 'In accordance with contemporary standards of good governance, we encourage the Catholic church in Australia to explore and develop ways in which its structure and practices of governance may be made more accountable, more transparent, more meaningfully consultative and more participatory, including at the diocesan and parish level'.

This led to recommendation 16.7:

The Australian Catholic Bishops Conference should conduct a national review of the governance and management structures of dioceses and parishes, including in relation to issues of transparency, accountability, consultation and the participation of lay men and women. This review should draw from the approaches to governance of Catholic health, community services and education agencies. (The Royal Commission: Vol.16 (2): 682).

The 'approaches to governance' refer to the Company Limited by Guarantee civil structure that was established by Religious Institutes about 45 years ago to govern their health, aged care, welfare and education services. Up to the Royal Commission, Australian bishops have been reluctant to use the Company Limited by Guarantee structure. However, more recently five dioceses have incorporated their school education services as Companies Limited by Guarantee within the Corporations Act 2001.

This Act allows for a membership model of corporate governance that divides authority between the company members and the board members. This division of corporate powers among different parties makes the membership model corporation an attractive governance tool for Catholic organisations as it allows the members in civil law and the people

who make up the public juridic person (canonical stewards) in canon law to be one and the same. It also means that in articulating what the canonical stewards consider to be the non-negotiables for a Catholic ministry, they are ensuring that mission is the bottom line and that the board is co-responsible for this outcome.

In the incorporated board structure, the members of the company can reserve to themselves some responsibilities within the limits of nonprofit corporate law. This gives them the authority to influence a set of corporate decisions which they consider foundational to the mission. These rights are often referred to as the members' 'reserved powers'. These powers may vary from group to group but usually focus on three areas: firstly, *documents* (the right to approve and amend articles of incorporation and the organisation's mission); secondly, *people* (the right to appoint board members (including the Chairperson), ratify or approve the appointment of the executive officer); thirdly, *property* (approve acquisitions, mergers and dissolutions, approve or ratify the indebtedness and mortgaging and sale of property). However, the sponsor's foundational mission and structure, together with the size and scope of its school services, sometimes requires a more multi-layered governance system.

Depending on the number of "layers" of authority [in the Catholic governance entity], the final one, the canonical leadership [or canonical stewardship] is the one where the two systems of law – civil and canonical – come into play. Since, in the corporate world, it is the corporation which is supreme, the reserved powers have to be exercised in such a way that, before the incorporated board makes its final decision, the canonical approvals must have been obtained. It is generally accepted that the canonical realm is subject to the civil one when it comes to the operations of civil corporations (Morrisey, 2006).

In conclusion, an examination of the diocesan structure indicates that it is a complex and multidimensional system. Most of that complexity can be attributed to the extensive aspects of canon law that must be considered in the operations of a diocese which could render the diocesan processes ineffectual if not properly administered. While complex, diocesan structures in Australia are quite uniform, once size

and geographical location are taken into account. Having the ability to dialogue and listen respectfully is a critical human ability to ensure unity in the relationships between all the key personnel in leadership positions. Another aspect of diocesan governance which can cause difficulties is the fact that some positions, for example, financial administrator, are recognised canonically. The human ability of the incumbent to form constructive relationships with people and groups both inside and outside the diocese can become strained if the Financial Administrator acts out of a position of higher status based on the identification of her/his position in canon law. As was often wisely observed by eminent canon lawyer, Fr Frank Morrisey, 'the power of influence is always more effective than the power of control in Church governance'.

From a governance perspective, because the bishop remains the sole decision-maker in significant decisions in the hierarchical structure, accountability is not easy to demonstrate. It is interesting to note that the *Diocesan Schools Governance Type 1: The unincorporated board structure* has the simplest governance structure in this study but also the most centralised decision-making system. It also has the most number of schools to govern and the least local participation in a school's governance apart from having a consultative voice in some school level decisions. This section on Diocesan Schools' Governance demonstrates that the activities of Church members with governance responsibilities are established through a complex system of religious authority. From a governance perspective, diocesan governance is still marked by significant centralisation, the rationale of which is to maintain a particular interpretation of religious authority, underpinned by canon law.

The religious institute governance structure

For most of its history, the work of the Church, especially education, has been largely shared by groups of men and women who belong to religious institutes. Those women and men who belong to religious institutes make a life-long commitment to the mission of the Church which usually reflects the unique vision of the person who founded their institute. They make public vows that include poverty, chastity and obedience and choose to live a communal life. This life-long

commitment means that religious institutes members are required to embrace a life-long formation and education in the theology of the Church, religious life and personal development and if applicable, professional development in leadership, education, health and welfare.

Vatican II affirmed that the origins of religious life lie 'under the inspiration of the Holy Spirit' and emphasised the uniqueness of each Religious Institute in its contribution to the Church (*Perfectae Caritatis*, para. 1 & 2b):

It rebounds to the good of the Church that institutes have their own particular characteristics and work. Therefore let their founders' spirit and special aims they set before them as well as their sound traditions – all of which make up the patrimony of each institute – be faithfully held in honor.

It naturally follows that there is great diversity in the ways religious institutes have developed their structures and processes with reference to their own particular characteristics, traditions and work. The uniformity among them is about compliance with certain canonical provisions regarding religious life, however, the diversity is found in the interpretation of each one's heritage and traditions in the way each Institute has defined the way it lives the mission of the Church. Throughout history, this process of defining and refining in the context of new and emerging theologies of religious life and Church has meant that schools sponsored by each institute have also been re-interpreting their religious meaning system in each local context. As religious institutes have changed and adapted their governance practices, these changes flowed through to local level governance.

Religious institutes are regulated by the same system of law as ordained ministers, the Code of Canon Law. In Canon Law the head of the religious institutes is a major superior, although in practice locally, a variety of titles are used, for example, congregational leader, provincial, director. In this paper, a major superior is called by the generic title of congregational leader.

Some congregational leaders may be accountable directly to the Holy See through the Roman Curia^{xxiii} (in which case their organisations are called Pontifical Institutes); others may be accountable through a diocesan bishop (these are called Diocesan Institutes). This means that the local episcopal structure may have

varying levels of control over different religious institutes. This distinction has taken on a new meaning with the formation of Public Juridic Person, called Ministerial PJP, which will be discussed in the next section of this paper.

One of the offices within the Roman Curia, the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life (CICLSAL), is responsible for, and coordinates, Religious Institutes of both women and men. This office of the Church approves the constitutions of each Religious Institute and legislates, in an ongoing way, what is and what is not permitted in the light of Canon Law and the institute's constitution. Through this means religious institutes exist and are legitimated within the broader system of the Church. The choice to form as a Pontifical or Diocesan religious institute is largely dependent on the vision of the Founder and/or historical circumstances.

Generally, the membership of a religious institute elects its leadership through a democratic process for a fixed term. The members elect a Congregational Leader and a fixed number of others who make up the leadership team. On election, they become both the Canonical Stewards for their congregation and its works as well as the trustees in civil law. They have a dual identity.

In order to commence an apostolate in a local area, the congregational leader must obtain approval from the diocesan bishop to do so. Each religious institute is administratively independent of the local episcopal structure of the Church, in terms of its internal administration of its school, living conditions and day-to-day operations. The local Bishop has certain other canonical responsibilities with regard to Religious Institute schools:

Canon 806

§1. The diocesan bishop has the right to watch over and inspect the catholic schools situated in his territory, even those established or directed by members of religious institutes. He has also the right to issue directives concerning the general regulation of catholic schools; these directives apply also to schools conducted by members of a Religious Institute, although they retain their autonomy in the internal management of their schools.

§2. Those who are in charge of catholic schools are to ensure, under the

supervision of the local Ordinary, that the formation given in them is, in its academic standards, at least as outstanding as that in other schools in the area.

In recent history, the diocesan bishop's right 'to watch over and inspect the Catholic schools situated in his territory' has largely been maintained informally by developing collaborative, open and collegial relationships between the diocesan bishop and the individual congregational leaders who sponsor schools in his diocese. In particular, the development of these types of relationships between the Diocesan Director of Education and her or his executive staff with the Principals of Religious Institute schools and his or her executive staff. There are few examples of formal processes between bishops and religious institutes schools regarding religious practice in these schools.

The civil law identity of most religious institutes is that they are incorporated under a State or Territory Act of Parliament, for example, the [NSW] *Roman Catholic Church Communities' Lands Act 1942* or as a company limited by guarantee or as Unincorporated Association^{xxiv}.

Since their foundation in Australia, most religious institutes have relied on the skilled advice of lay people in the governance of their institute and in their sponsored works. For the last 50 years, the Church has become increasingly dependent on lay professionals at both management and governance level. Religious institutes embraced the Second Vatican Council's recognition of the importance of lay people and their gifts, rights and responsibilities both in society and in the Church:

In the Church, there is a diversity of service but a unity of purpose. Christ conferred on the apostles and their successors the duty of teaching, sanctifying, and ruling in His name and power. But the laity, too, share in the priestly, prophetic, and royal office of Christ and therefore have their own role to play in the mission of the whole People of God in the Church and in the world. (Apostolicam Actuositatem: 2: 1966).

As the provision of education services became more complex, especially with regard to external accountability, compliance and risk management, a number of religious institutes recognised that they no

longer had the internal capacity to govern professionally their sponsored works such as education and sought out another civil legal form that would enable them to maintain their canonical responsibilities with regard to their sponsored works and increase their civil governing capacity at board level by changing their boards from the status of noncorporate (advisory) to full responsibility in civil law terms and inviting lay people to share equally the governance responsibility. They accomplished this change by incorporating these works as a Company Limited by Guarantee.

Over the last five decades the religious institute sponsors of education, health, aged care and welfare services have entered into a continual process of defining and refining governance processes and systems through spiritual reflection, dialogue, transparency and creativity. They have also been willing to experiment and innovate, as well as learn from those experiments whose outcomes were less productive than had been hoped. The incorporated entities of these religious institutes have grown in an understanding of and participation in the mission of the Church by providing lay board members with access to formation programs. The fact that these lay people actually hold the legal responsibility for a particular school or group of schools is not inconsequential in the professionalisation of the governance of these boards.

This was not an easy process for the whole membership of the religious

institutes. There was pain and grief in letting go of the Institute's total governance responsibility. There was loss of identity – the schools no longer belonged to 'us' meaning the institute's membership but 'us' now meant a co-responsibility between the Institute as an organisation and lay people as a group of individuals. However, years of surviving fundamental changes in the nature of religious life, their communities and schools since Vatican II enabled the membership to move to a new reality.

Of significance in accepting these changes is the fact that religious life is synodal in nature. Recently, Cardinal de Aviz (Prefect of CICLSAL) observed that the governance processes of religious institutes were based on synodality as a specific form of collegiality. 'Synodality manifests and concretely realizes being in communion, in walking together, in coming together and in the active participation of all members in the evangelizing mission embodied in their own charism' (de Aviz: 2010). For decades, members of religious institutes have been developing authentic ways of discernment, dialogue, accountability and transparency. The lessons learnt in practising synodality have been easily translated to the way they have included lay people in the governance and management of their schools.

Contemporary Religious Institute governance of schools in Australia

There are five governance types in religious institute schools governance. Specific details of these types are found in Appendix B.

Two significant governance requirements for most religious institutes are the limit on the term of office for the Institute leadership and that the Institute members elect or make known their preference for the choice of leader and team, a process that can ensure a level of accountability. Term limits in any governing group ensures that the group has the potential to be constantly renewed with new ideas and approaches. An election process enables the full membership to discern which group of members would, together, provide the greatest capacity to govern their mission within their tradition and heritage. While religious institutes are structurally dependent on the universal Church, they have been able to use their relative autonomy to develop, incrementally and creatively, their governance and management structures in ways that have not been evident in the hierarchical Church.

Laity and lay people dilemma

Very recently, the Australian Catholic Bishops Conference noted that Catholic education requires that leadership and staff dedicate themselves to ensuring that Catholic schools are:

....truly Catholic in their identity and life. This will require that, as far as possible, we retain a 'critical mass' of Catholic students and staff in our schools, even as we welcome those from other religious backgrounds (ACBC, 2021:6).

A prerequisite of joining a religious institute is that the aspirant must be a baptised member of the Catholic Church. Baptism made the aspirant a member of the Catholic Church's laity. The term 'laity' is used in this paper to describe baptised members of the Catholic Church who are not ordained ministers or members of Religious Institutes. The term 'lay people' is used in this paper to include laity and non-members of the Catholic Church. This distinction is significant in Church governance because some governance roles are limited to the laity as baptised members of the Church while other governance roles are also open to the lay people.

When the majority of religious institutes formed incorporated

GOVERNANCE TYPE	NO. OF RELIGIOUS INSTITUTES	NO. OF SCHOOLS
Religious Institute Schools Governance Type 4: the trust model company limited by guarantee	1	4
Religious Institute Schools Governance Type 5: the company limited by guarantee structure	13	21
Religious Institute Schools Governance Type 6: the associations incorporation structure	3	3
Religious Institute Schools Governance Type 7: the education company (with incorporated schools boards)	3	14
Religious Institute Schools Governance Type 8: the company limited by guarantee (with unincorporated school boards)	2	26
Total No:	21	68

companies to govern their schools, the company members, the leadership team, were also members of the laity. In many cases, this has changed over time as lay people are appointed as company members. However, at the board governance level, it was and still is possible to be a member of a religious institute or member of the laity or a lay person to be a board member. This change in the religious identity of board members opened up the critical issue of the formation of laity and lay people joining these boards.

The fact is that the Church has not taken lay persons seriously or for that matter treated them as adults with what that implies today. Now we need them; we need their skills, their dedication, their insight, their labour. Otherwise, we cannot carry forward the mission of the Church through established as well as emerging ministries (Nicholson: 2009:110).

Formation is a specific term in the English speaking Church that does not equate with the term professional development which is commonly used in other types of organisations. Pope St. John Paul II (1988:58) described the meaning of formation some 30 years ago:

The fundamental objective of the formation of the lay faithful is an ever-clearer discovery of one's vocation and the ever-greater willingness to live as to fulfil one's mission.

Formation that is about identity (who you are) and mission (what is your mission in life) is, in Nicholson's terms, a radical process. It is about integrated personal growth in all its dimensions – human, spiritual and intellectual. 'It's not about acquiring an overlay of ecclesiastical knowledge ... or modifying one's behaviour so that it expresses values that are in harmony with the values of a particular Church facility'. It is a radical process because it's about the development of the whole person.

Establishing the truth of faith, and a shared commitment to that truth within the communion of the church, is a process that is both complex and demanding. It requires not just the engagement of all members of the church, but the engagement of more than the intellect of those members. Since that faith has its focus on the mystery of God, it is also a lifelong project (Lennan 2004:183).

David Walker (2015: 15) reflected on this process in the development of Catholic education:

As we look back at our faith tradition, it is clear that education was normally carried out within a context of deep faith, by people deeply committed to God....These people were driven rather than drawn: driven by their love of God rather than just the need of the day. They saw Jesus coming to them in the person of those in need. The way the Church reaches out to the needs of the present age will change, but the grounding of its ministry in the inner life will not change.

In practice, both the laity and lay people are generally called by the generic term of 'lay people'. However, from a governance perspective the distinction needs to be acknowledged because as these governance structures have further evolved (Ministerial PJP Model) members of the laity have been able to become canonical stewards. This requirement may also be necessary at the management level of school principal, deputy principal, director of religious education or director of mission.

The dilemma about laity or lay people in Church governance is real. Governance practice in diocesan, religious institute and ministerial PJP has demonstrated that, with the right formation, all lay people can come to learn, appreciate and apply the significant aspects of the religious meaning system in their decision-making.

The ministerial public juridic person structure

The structure had its generation in the United States about 30 years ago when the funding for health made it very difficult for small stand-alone health facilities to exist because of their limited assets. While it was possible to merge these individual health facilities in civil law, there was no canonical means to merge several canonical stewards into one canonical entity. Hence the emergence of a new form of Public Juridic Person. At the same time as their USA counterparts, Catholic health facilities in Australia were confronting the problem that some Religious Institutes with small health facilities decided to sell their facility to non-Church providers because there was no mechanism for the transfer of these works to another Catholic health facility. This was a great loss to the Church because it limited the Church's influence in the world through its healing mission. Hence the establishment of the first Ministerial Public Juridic Person (PJP) structure in

Australia for Catholic Health Services NSW (later to be re-named Catholic Healthcare Ltd).

In reflecting on the purpose of ministerial PJPs, Nicholson (2009:110) said:

In Canon Law, the purpose of [Ministerial] PJPs is to pursue the mission of the Church on behalf of the Church. There is a genius, something incredibly pragmatic, within the Catholic tradition that can combine the high ground of theological tradition with earthly pastoral application. When it does that, it is its best self.

There are now 12 Ministerial PJPs in Australia operating in nearly all states and territories providing a mixture of health, aged care, education and social service. Seven of those PJPs govern 90 schools or 4.9 per cent of all Catholic schools or about 25 per cent of secondary schools.

Canonist Jordan Hite in the publication *A Primer on Public and Private Juridic Persons* (2000: 69) lists the characteristics of a public juridic person:

- It is constituted by competent church authority.
- It acts on behalf of the church, not merely in its own name.
- It fulfils a specific task entrusted to it for the common good.
- It acts within the limits established by church law and its approved statutes.
- Its property is church property and is administered in accordance with the requirements of canon law.

The distinction between pontifical and diocesan religious institutes has been significant for the governance of each type of religious institute but now is increasingly important for the new Ministerial PJP which has been established by religious institutes to govern and manage their educational services into the future. The change in governance structure is intended to mirror the governance structure of the founding sponsor. Pontifical PJPs are canonically responsible to CICLSAL in the Roman Curia while diocesan PJPs are canonically responsible to an individual bishop or groups of bishops depending on the geographical location of the Ministerial PJP's services in the relevant diocese(s).

An important aspect of this new type of Church governance structure (Ministerial PJP) is that it provides a unique opportunity for a new level

of lay participation in the governance of the Church. While it is possible for lay people to be the civil trustees of a service sponsored by a religious institute, the Ministerial PJP structure enables members of the laity to be appointed as stewards (which includes canonical authority), a role formerly open only to members of the clergy and religious institutes. These structures also provide the opportunity to address the member-serving and public-serving dichotomy that has been part of the religious discourse about Catholic schools. In a keynote address given in 2018, David Ranson articulated this opportunity:

Our public juridic persons are most suited to stand in the gaps between social context and ecclesial community, i.e. they are most suited to appreciate fully those areas in which there is alienation between culture and the Church, and to witness to the Kingdom in those margins. Because they are at the same time 'church' and yet, in another sense, beyond Church, our emerging institutions... have a unique opportunity to witness in these margins - to be truly bridge builders and instruments of reconciliation, to be able to bring forth both the Gospel and the Church to those who will never be able to feel comfortable, or belong, within the structures of the Church.

In quoting Hahnenberg (2007), McMullen and Oakley see the ministerial PJPs draw attention to the new form of lay ecclesial ministry in this new Church governance form:

The emergence of lay ecclesial ministry ... stands out as one of the top three or four most important ministerial shifts of the past two-thousand years'. It offers 'a way of living out the gospel and serving the church's mission that [is] at the same time both traditional and radically new The shape of the Spirit in the lives of the baptized will find new form as the need arises.

While the Ministerial PJP model has existed for nearly 30 years, it is still a 'work in progress'. Already, some of these entities have reviewed their governance structures as circumstances change. These circumstances can arise from ongoing history, from politics and new civil legislation and from changes in the Church itself, especially with regard to theological and social thought. Of critical importance in enabling the Ministerial PJP to remain faithful to its bottom line of continuing the mission of Jesus is the availability of laity to

fulfil the role of canonical stewards who have the necessary human, spiritual and intellectual formation that leads to an integrated personal growth. Then, by extension, a primary focus of the canonical stewards is to ensure there are adequate resources for the initial and ongoing formation of all those engaged in governance so that mission remains the bottom line.

The establishment of the Ministerial PJPs

The observations contained in this section have been drawn from examining the following governance documentation of six of the seven Ministerial PJPs: the Ministerial PJPs' Statutes and Constitution, their Education Company Constitution (if applicable) and the Constitution of one school of the Ministerial PJP's school system. Through this process it has been possible to track the way in which the mission, meaning system, canonical requirements, governance structures and processes have been organised through each level of governance.

The establishment of a new Ministerial PJP commences with the leader of one religious institutes or the leaders of a number of religious institutes applying to a relevant Church authority to create this new entity. The fundamental purpose of the new entity is to ensure that the 'spirit and tradition' or the religious meaning system of the founding religious institute continues into the future with minimal input of the founding religious institute in the governance of the new entity.

For the purposes of this paper, the leader or leaders are called foundation institute member(s). The relevant Church authority might be CICALSAL or the bishop or bishops of the diocese(s) in which the schools are situated. The Church authority in establishing the new entity approves the canonical statutes and confers juridic personality on the new entity which recognises it as a Catholic Church organisation. The statutes articulate the canonical constitution of the new entity. It is then the responsibility of the Foundation Institute Member(s) to establish the governance structures (both canonical and civil) of the new Ministerial PJP.

Hite (2000:13) suggests that the fundamental principle to apply in ordering the relationship between the canonical structure and the legal structure is to provide compatibility and the absence of conflict. These conflicts are most likely to occur at the levels of governance and procedures.

The canonical statutes and civil incorporation documents need to be in procedural harmony.

In the case of Catholic schooling, the new juridic person maintains sufficient reserved powers over the schools in its jurisdiction in order to exercise its faith and administrative obligations over the affairs of those schools, ensuring the integrity of the mission. These reserved powers align with the reserved powers of religious institute schools described in an earlier section of this paper.

The primary responsibility of the foundation institute member(s) is to appoint the Stewardship Council of the new Ministerial PJP. If there is only one foundation institute member, then this member appoints the Stewardship Council. If there is more than one founding institute member then the founding institute members form a foundation institute council which appoints the Stewardship Council. The canonical statutes identify the number of foundation institute members from each founding institute who constitute the foundation institute council.

The foundation institute member(s) decides which of their reserved powers (as per the canonical statutes) they wish to transfer to the Stewardship Council. The majority of foundation institute members retain the following reserved powers:

- appoint members of the Stewardship Council
- approve the amendments to the statutes or the constitution of the Ministerial PJP
- admit additional foundational institute members.

The majority of foundation institute members delegate the following powers to the Stewardship Council:

- ensure that the educational works operate in accordance with the teaching, discipline and law of the Catholic Church
- approve all acquisitions, by gift, purchase, transfer to entity in accord with Canon Law and the entity's constitution
- determine in accordance with Canon Law the acts of administration which go beyond the limits and manner of ordinary administration and the process by which acts of administration will be carried out
- propose to the foundation institute member's council any alienation of

temporal goods belonging to the stable patrimony of the Ministerial PJP

- prepare for the foundation institute member’s council, the annual report, for the Holy See or relevant Diocesan bishop(s).

Half the foundation institute members maintained the following powers, while the other half delegated these powers to the Stewardship Council:

- authenticate the vision and mission for the educational works
- determine the appropriate formation programs for the Stewardship Council.

The Ministerial PJP then carries out its activities in the civil sphere as a Church entity by being civilly incorporated. Five of the six Ministerial PJPs studied for this paper have been incorporated under the relevant State Act of Parliament which requires the formation of a body corporate and the appointment of trustees. Four Ministerial PJPs are incorporated under the NSW Roman Catholic Church Communities Lands Act 1942 and one under the Qld Roman Catholic Church Incorporation of Church Entities Act 1994. One Ministerial PJP is incorporated as a company limited by guarantee. Canonically, five of the six Ministerial PJPs are pontifical entities and one is a diocesan entity.

The Stewardship Council retains the canonical powers delegated to it by the foundation institute member(s). Then, in accordance with the Ministerial PJP’s civil registration or constitution, the Stewardship Council delegates to incorporated boards the governance and conduct of specific ministries. Together, these governance partners must seek to develop a strategic direction to ensure that the ministries flourish, exemplify contemporary best practice and crucially remain faithful to continuing the mission of Jesus. (McMullen, G. and Oakley, P. (2020).

Contemporary Ministerial PJP governance of schools in Australia

There are four governance types in Ministerial PJP schools governance. In each of the four Ministerial PJP governance types listed, the foundation institute member(s) have already established a Stewardship Council described in the previous section, ‘The establishment of the Ministerial PJPs’. Appendix B provides the specific details of each type, commences with the Stewardship Council and does not repeat how the Stewardship Council is formed.

It is not surprising that the Ministerial PJP are diverse in governance form, they are evolving organically from founding religious institutes whose schools’ governance was also diverse in form. The continuing cord that binds the founding religious institute historically with the new PJP is the religious meaning system. Yet many of the determinants that contributed to the ongoing vitality and viability of the religious institute’s meaning system are not the same in the new PJP. Normally, the members of the Stewardship Council have not made a formal life-long commitment to the mission; only have a formal Church identity when they are a member of the Stewardship Council; are appointed for a fixed term after which may have no ongoing relationship with the PJP; have had various opportunities for ongoing formation and may have various understandings of Church structures and processes.

All of these differences may have implications for the viability of the stewardship of the new PJP. The Ministerial PJP model requires a ready and constant availability of people who can be appointed to the Stewardship Council and who are known to the appointing Foundation Institute. Turnover is an issue. The increasing number of new Ministerial PJPs will put additional pressure on the availability of suitable people to become Stewards. This situation may influence some Foundation Institutes to reappoint some lay people to various positions within the higher level governance structure.

Flowing from the constant turnover of members of the Stewardship

Council raises the issue of the cost and availability of high quality formation programs. This is not an inconsequential issue, taken that these resources will probably need to come from the schools in the Ministerial PJP ‘system’. Also, while the founding institute may be able to provide personnel to assist with formation, this may also be a diminishing resource.

This paper proposes that ‘while religious institutes are structurally dependent on the universal Church, they have been able to use their relative autonomy to develop, incrementally and creatively, their governance and management structures in ways that have not been evident in the Episcopal church’. Since the variety of governance arrangements in Ministerial PJPs indicate that they also enjoy that relative autonomy, it is hoped that they will also be able to use this autonomy to develop incrementally and creatively, their governance and management structures.

GOVERNANCE TYPE	NO. OF MINISTERIAL PJPS	NO. OF SCHOOLS
Ministerial PJP Schools Governance Type 9: the incorporated education company with incorporated school boards.	2	14
Ministerial PJP Schools Governance Type 10: Ministerial PJP is the sole member of each school board.	2	11
Ministerial PJP Schools Governance Type 11: the incorporated school board with a variety of company member groups for the school companies.	1	10
Ministerial PJP Schools Governance Type 12: the unincorporated school board.	1	53
Total No:	6	88

Conclusion

Writing this paper on the governance of Catholic schools in Australia has been complex and multi-faceted. This paper explains how situating Church governance organisationally in the nonprofit sector automatically means that the religious meaning system is the 'bottom line'. This allows for an exploration of how mission and authority are intrinsically linked in the structuring of governance of Catholic organisations, especially Catholic schools. However, an examination of religious authority demonstrates that the interpretative framework for understanding authority in the Church and its link to mission is theological, not just canonical.

The paper further demonstrates that the history, theology, tradition, governance arrangements, organisational structuring, canon and civil law requirements and multiplicity of local arrangements make the analysis of the governance of Catholic schools in Australia a perplexing and potentially complex task. It is hoped that those who are involved in Church governance at a variety of levels will 'dip in and out' of the conversation in this paper as their local circumstance requires. The following discussion topics are provided to continue the narrative of this paper.

DISCUSSION TOPICS

1. The laity or lay person governance dilemma

In a recent statement the bishops speak about the need for 'a critical mass of Catholic students and staff in our schools' and it seems reasonable to assume this is also their wish in the governance of schools. But does the critical mass mean that there simply has to be a numerical majority of baptised Catholics in every Church governing group? Is it enough that a person has been baptised and been to a Catholic school? Or is it about 'modifying one's behaviour so that it expresses values that are in harmony with the values of a particular Church facility'? How does a theological interpretation of the Church's mission on page 8 of this paper assist with attending to the laity or lay person governance dilemma?

2. Formation for mission

The human interpretation of the meaning in a religious organisation can be varied. Bishops and members of religious institutes have made a life-long commitment to the mission of the Church. The involvement of lay people in Church governance roles is normally limited to a specific term. Is it reasonable to assume that the interpretation of the mission by lay people may be more varied than that of religious institute members? What are the implications for formation programs for lay people in Church governance?

3. Church governance conundrums

Those involved in the governance of Catholic schools in Australia are dealing with a variety of issues not imagined by the founders of these schools. These issues affect the way the schools are governed, the development of structures, the policies and resources that are required – all within the context of ensuring that mission is the bottom line. Contemporary governors of these schools and systems can no longer depend on a cohesive world view, loyalty to Church, implementation of sanctions, societal trust in the Church's goodness nor the Church's right to insist that a particular theological position should be universally applied across all society. What then can these governors depend on in carrying out their role?

4. Synodality and governance

The Light from the Southern Cross document describes synodality as involving 'the active participation of all members of the Church in processes of discernment, consultation and co-operation at every level of decision-making and mission'. This paper provides ample descriptions of types of governance at various levels of decision-making. How authentic is this description of synodality for the three PJP types of governance (diocesan, religious institute, Ministerial PJP) examined in this paper?

APPENDIX A: COMMON LANGUAGE

DOCUMENTATION LANGUAGE	COMMON LANGUAGE
Bishop	Bishop or archbishop
Diocese	Diocese or Archdiocese
Foundation institute members	Founding sponsors; stewards; founding stewards; members;
Stewardship Council	Trustees; canonical stewards; council; councillors; governing council;
Educational works	Ministries; apostolates; apostolic works;
School board	Stewardship Council; college board
Company members	Members of an educational company or a school board
Board members	Directors; board directors; company directors
School	College; flexible learning centres

APPENDIX B: SPECIFIC DETAILS OF EACH CATHOLIC SCHOOL SYSTEM GOVERNANCE TYPE

Diocesan Schools Governance Type 1: the unincorporated school board

While these boards are established by the bishop and the board members appointed by the bishop, it is often not clear whether they are advising the bishop or advising the director of schools. The actual governance structure is also complicated by the fact that the director of schools is a direct employee of the bishop. If the board does have a charter or constitution that spells out the board's roles and responsibilities, delegations and responsibilities, then these boards are participating in the governance of the diocese. Governance participation, however, does not usually include oversight of the employment of the director of schools. In either unincorporated model, the director of schools usually has a regular meeting with the bishop, however, it is not usual that the board chair would attend these meetings.

The diocesan Catholic schools board provides advice to the bishop regarding educational policy and priorities for the Catholic schools administered by the diocese. The finance committee of this board provides recommendations and advice in relation to the financial operations of the diocesan community of schools. This includes recurrent, capital and special purpose funds administered through the Catholic schools office. The mandate of some of these finance committees has been expanded to mirror the mandate of the Diocesan finance committee, namely: advise on matters of long and medium term financial planning; account each year for income and expenditure; identify and evaluate areas of financial risk for the schools board. These added duties for the finance council help to enable a seamless flow of information between the various diocesan financial groups/positions and help to cut down duplication of activities, strengthen reporting and compliance.

A challenge for unincorporated boards and committee members with financial skills is to modify their expectation of their taken-for-granted financial management systems of the corporate world to the particular values that drive this type of organisation. For example, the theological principle of subsidiarity (having decisions made at the lowest, most appropriate level) means that aspects of financial decision-making are often devolved to local school level. This way

of operating may not be the most efficient way of carrying out some processes but it is respectful of this theological principle and diocesan values. At its best, it ensures inclusion in diversity.

Diocesan Schools Governance Type 2: the incorporated board structure

Four dioceses have recently adopted the incorporated company limited by guarantee structure for their diocesan education systems, largely according to the description in the previous section. The significant difference in the way religious institutes have formed this type of company is found in choice of the number of company members. In the diocesan form, there is only one physical person company member and that person is the bishop. While the bishop might consult his senior diocesan staff on the 'reserved powers' that are referred to him as company member, 'consultation' is not 'discernment'. Discernment in this context requires that all involved in the discernment are able to contribute equally to the outcomes of the process. This equality also ensures accountability in decision-making. It could be argued that consultation with senior staff is neither equal nor lacking in conflict of interest.

Diocesan Schools Governance Type 3: the trust model company limited by guarantee

In this type, the diocesan bishop incorporates the school system as a Trust Company Limited by Guarantee, which is a public company. This type of trustee company limited by guarantee is more complicated than all other companies limited by guarantee in this study. Firstly, there is increased compliance which relates to ss191 and ss195 of the Corporations Act, namely, the 'material personal interest' provisions. The 'material personal interest' provisions require that directors with an interest in the matter being discussed must leave the room for the discussion/decision. While many companies limited by guarantee do impose this level of scrutiny, they are not obliged to do so. In some cases, the conflict of interest policy is interpreted as the director may be present for the discussion but may not vote. Secondly, the company can have only one person as a member of the company and there is no requirement for accountability between the directors and the one company member. Thirdly, for legal purposes the company is the trustee which means that the directors have a dual accountability. The trustee

(in this case the company, governed by a board of directors) must act in the interests of the beneficiaries of the trust in accordance with the explicit trust deed and the relevant trusts act. In addition, the directors have fiduciary duties to the company as outlined in the Corporations Act. This Diocesan schools governance Type 3, because of its added complexities, would require highly skilled board members to be able to act in their dual roles.

Religious Institute Schools Governance Type 4: the trust model company limited by guarantee

In this type, the leader of the religious institute incorporates the school system as a Trust Company Limited by Guarantee which is a public company. This type of trustee company limited by guarantee is more complicated than all other companies limited by guarantee in this study. Firstly, there is increased compliance which relates to ss191 and ss195 of the Corporations Act, namely, the 'material personal interest' provisions. The 'material personal interest' provisions require that directors with an interest in the matter being discussed must leave the room for the discussion/decision. While many companies limited by guarantee do impose this level of scrutiny, they are not obliged to do so. In some cases, the conflict of interest policy is interpreted as the director may be present for the discussion but may not vote. Secondly, the company can have only one person as a member of the company and there is no requirement for accountability between the directors and the one company member. Thirdly, for legal purposes the company is the trustee which means that the directors have a dual accountability. The trustee (in this case the company, governed by a board of directors) must act in the interests of the beneficiaries of the trust in accordance with the explicit trust deed and the relevant trusts act. In addition, the directors have fiduciary duties to the company as outlined in the Corporations Act. This diocesan schools governance type three, because of its added complexities, would require highly skilled board members to be able to act in their dual roles.

Religious Institute Schools Governance Type 5: the company limited by guarantee

In this type, each school is separately incorporated as a company limited by guarantee. The members of the religious institute leadership team are the company members for each school company. They retain canonical authority and certain civil law powers. Each board has the civil responsibility to manage the company as determined by the Corporations Act 2001 excluding the areas which have been reserved to the company members.

Religious Institute Schools Governance Type 6: the associations incorporations structure

There are two variations in this type. In one variation, the school is incorporated as an incorporated association in which the members of the religious institute leadership team are the members of the association. They retain canonical authority and certain civil law powers. The members appoint the board which has the civil responsibility to manage the school as determined by the relevant incorporation act and the school constitution excluding the areas which have been reserved to the members.

In the second variation, the religious institute incorporates itself according to the Associations Incorporation Act. A committee of management is formed, from the leadership team of the institute, which has the responsibility to manage the affairs of the association. The committee of management directly manages the school.

Religious Institute Schools Governance Type 7: the education company structure with incorporated school boards

There are three variations in this type. In one variation, the religious institute, as an incorporated company limited by guarantee, incorporates an education company as another company limited by guarantee. The religious institute's schools are also separately incorporated as companies limited by guarantee. The religious institute company retains canonical authority and certain civil law powers. The sole member of the education company is the religious institute company. The primary purpose of the education company is to ensure that the religious meaning system of the religious institute has integrity and is sustainable. Other purposes of the education company might be to facilitate communication and collaboration between the institute's schools and to manage some of the reserved powers of the religious institute.

At the school boards' governance level, the sole member of the school company is the education company. In this model, the leader of the religious institute has certain reserve powers with regard to the school board members' responsibilities. Each school board has the civil responsibility to manage the company as determined by the Corporations Act 2001 excluding the areas which have been reserved to the company member and religious institute leader as formulated in the school's constitution.

In the second variation, the religious institute incorporates an education company as a company limited by guarantee. The members of the education company are the religious institute leadership team. The religious institute's schools are all separately incorporated as companies limited by guarantee. The education company retains canonical authority and certain civil law powers. The primary purpose of the education company is to ensure the provision of Catholic education according to the teaching and practice of the Church.

At the school boards' governance level, the sole member of the school company is the education company. Each board has the civil responsibility to manage the company as determined by the Corporations Act 2001 excluding the areas which have been reserved to the company member and as formulated in the school's constitution.

Religious Institute Schools Governance Type 8: the company limited by guarantee structure with unincorporated school boards

In this Type, the religious institute incorporates a company limited by guarantee where the members of the company are the religious institute leadership team. The religious institute's schools are unincorporated entities. The religious institute retains canonical authority and certain civil law powers. The primary purpose of the education company is to operate the education entities and facilities of the religious institute. Each school has an unincorporated board which provides advice and support to the principal and staff of the school with regard to all aspects of the school's operation, except the management of staff.

Ministerial PJP Schools Governance Type 9: the education company with incorporated school boards

In Type 9, the Stewardship Council incorporates an education company as a company limited by guarantee to assist the Stewardship Council in the applied governance and management of Stewardship Council's reserved powers. The primary purpose of the education company is to ensure that the religious meaning system of the religious institute has

integrity and is sustained and developed. The Stewardship Council retains canonical authority and certain civil law powers with regard to the education company.

Each of the schools is separately incorporated as companies limited by guarantee. At the school board governance level, the sole member of the school company is the education company. Each school board has the civil responsibility to manage the company as determined by the Corporations Act 2001 excluding the areas which have been reserved to the company member and as formulated in the school's constitution.

Ministerial PJP Schools Governance Type 10: the Ministerial PJP is the sole member of each school board company

In Type 10, the Ministerial PJP is incorporated as a company limited by guarantee or a body corporate by the relevant state Church Incorporation Act. The company members are the Stewardship Council.

Each of the schools is separately incorporated as companies limited by guarantee. At the school board governance level, the sole member of the school company is the Ministerial PJP company. Each board has the civil responsibility to manage the company as determined by the Corporations Act 2001 excluding the areas which have been reserved to the company member and as formulated in the school's constitution.

Ministerial PJP Schools Governance Type 11: the incorporated school boards model with a variety of company membership groups

In Type 11, each of the Ministerial PJP schools is separately incorporated as companies limited by guarantee. The Stewardship Council appoints the company members and also the board members of each school company who are different people. However, one set of company members may be the company members for more than one school board.

Each board has the civil responsibility to manage the company as determined by the Corporations Act 2001 excluding the areas which have been reserved to the company members or Stewardship Council as formulated in the school's constitution.

Ministerial PJP Schools Governance Type 12: the unincorporated schools board structure

Type 12 differs from the previous three types in the establishment stage of the PJP. The foundation institute member also establishes a stewardship council whose responsibility is to oversee the canonical responsibilities of the Ministerial PJP. The Stewardship Council appoints a board to directly govern, conduct and manage its schools in accord with the board's constitution excluding the areas which have been reserved to the Stewardship Council as formulated in the board's constitution. The members of the Stewardship Council and the board are different natural persons.

Unincorporated boards are established at the school level whose role is to share, through formal processes of accountability to the Ministerial PJP Board, the leadership of the school with the principal in the areas of mission, planning (including) capital works, finance, audit and school policy.

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NOTES

- i. Catholic Church means Roman Catholic Church. On most occasions the 'Catholic Church' will be referred to as the Church for brevity's sake, it does not imply a superiority of the Catholic Church over other Churches.
- ii. The governance documents of the various sponsoring groups in this document use different definitions for the same role. Therefore, the author has chosen to use a uniform language for the different roles. The table in Appendix A lists the uniform language and the words which have the same meaning in the various governance documents.
- iii. The Royal Commission made 30 recommendations to four organised religions, of which, 21 were addressed specifically to the Catholic church. 12 of the 21 recommended that the Australian Catholic Bishops Conference request or consult with the Holy See about a particular change, most of which involved a change to Church governance. These statistics point to the complexity of way in which Catholic Church governance is structured.
- iv. In this paper, the term 'Catholic school' only relates to those schools that are governed and managed by Church canonical authorities which have the status of Public Juridic Person (PJP). A public juridic person operates in the name of the Catholic Church, and thus engages the credibility of the Church in its activities; its temporal goods are ecclesiastical goods, and thus their ownership and administration are governed by the prescriptions of the Code of Canon Law; each PJP has its own statutes (canonical articles of incorporation), the Code of Canon Law (canon 117) spells out many of its prerogatives and obligations, particularly in the area of accountability. (Morrisey, F. (2016). Introduction to Canon Law and General Norms. TAITE BBI, Pennant Hills. The governance of those schools (3) which have dual governance between a diocese and a Religious Institute have also been excluded from the discussion.
- v. A formal organisation is constituted when a group of people agree to a purpose and set of rules that potentially enable the organisation to continue when each of the founders are no longer involved. In this paper the term 'organisation' means 'formal organisation'.
- vi. In this paper, the term 'Religious Institute' is used as a generic term to describe groupings of women and men who, in accordance with their constitution, make public vows of poverty, chastity and obedience and lead a community life. These groupings can be called an institute, a society of apostolic life or a congregation.
- vii. A Ministerial Public Juridic Person is a legal entity under Canon Law that allows Church ministries (such as health, welfare and education) to function in the name of the Church.
- viii. Australian Charities Report 2017 on ACNC website: <https://www.acnc.gov.au/tools/reports/australian-charities-report-2017>.
- ix. Governance for Good: The ACNC's guide for charity board members, ACNC Ver 2, 2013, p 13. <http://www.acnc.gov.au/ACNC/Edu/Tools/GFG/GFG Intro.aspx>.
- x. Good Governance Principles and Guidance for Not-for-Profit Organisations, AICD, 2013, p11. <http://www.companydirectors.com.au/Director-Resource-Centre-Not-for-profit/Good-Governance-Principles-and-Guidance-for-NFP-Organisations>
- xi. Juridic Person has legal rights and obligations in the same way as a physical person. At church law, it can own property, enter into contracts, seek remedy for damages, operate various ministerial works. A juridic person may be either a group of persons or a group of things. Such groups transcend the individual and are directed towards purposes which benefit the church's Mission. Juridic persons may be either public or private, depending on the purposes for which the juridic person is established and the relationship the person has with the church (Lucas et al, 2008:66).
- xii. The first laws of the Church were compiled in 1140 AD and the Code of Canon Law was promulgated in 1917 and revised in 1983. It is currently undergoing another revision.
- xiii. www.sistersofcharity.org.au/who-we-are/history/
- xiv. The Second Vatican Council (1962-1965) was an official Church assembly which drew representatives from the whole world. The outcome of this assembly was a radical definition of Church theology with regard to its own members, other Christians and the Church's relationship with the world.
- xv. The term 'sponsor' is used in preference to 'owner' in accordance with the interpretation given by Maida and Cafardi (1983), that is, this term reflects that the diocese or Religious Institute not only owns the organisation in traditional corporate terms but are also conducting the service on behalf of the Catholic Church. The term 'sponsorship' is not used in the Code of Canon Law but is widely used in the life of the Church to describe new situations being faced by Church leaders in describing their role with regard to their apostolic works. Structurally, there has to be a canonical sponsor in order for the work to be considered as fully within the ambit of the Church's Mission.
- xvi. The term 'laity' is used to describe baptised members of the Catholic Church who are not ordained ministers or members of Religious Institutes. The term 'lay people' is used in this paper to include laity and non-members of the Catholic Church. This distinction is significant in Church governance because some governance roles are limited to the 'laity' as baptised members of the Church.
- xvii. www.Catholic-Hierarchy.org
- xviii. Pope Francis (2013), *Evangelii Gaudium*. Strathfield: Paulist Press.
- xx. Magisterium today is a term commonly used as a synonym for the college of bishops under the headship of the Bishop of Rome. (cf. Gaillardetz, 2003:60).
- xxi. Pope Francis speaking on 29 January 2021 to the National Catechetical Office of the Italian Bishops' Conference.
- xxii. All Public Juridic Persons in the Church are subject to the laws in Book V of the Code which defines 'Temporal Goods'.
- xxiii. The Roman Curia comprises the administrative institutions of the Holy See and the central body through which the affairs of the Catholic Church are conducted. The administrative units can be called Congregations, Tribunals, Pontifical Councils and Offices.
- xxiv. Unincorporated associations have no distinct legal status in civil law separate from their members. An unincorporated association does not legally exist in its own right and so it cannot sue or be sued at common law in its own name.

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