

**Models of Governance of Catholic Schools in Australia:  
The Governance of Catholic Schools as Dependent, Independent and  
Interdependent Members of Evolving Systems**

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This research paper seeks to identify and critique models of governance established in Catholic schools since 1972, the newly emerging governance issues in light of changing circumstances in the sector and potential responses to these. In identifying the key concepts and the Church's operational principles involved in the question of governance, the paper offers material beyond a simple examination of the issues. This material is offered to assist in understanding what is at stake and in discerning ways forward. Ultimately the paper examines the effectiveness of the models of governance as avenues to preserving Catholic identity and answering for government accountability while maintaining the Church's espoused operational principles of subsidiarity and collegiality in interdependent schools.

## Introduction

*The time is overdue for a thorough-going investigation of the administration and organisation of Catholic education and for the delineation of more efficient and more effective patterns of governance.*

The 1972 Armidale Statement. Tannock, 1975:243

So concluded the first Australian Catholic Education Conference in 1972. This gathering was the springboard which led to the formation of systems of Catholic schools across Australia, the impetus being the need for structures for the distribution and acquittal of government funds. The models of governance adopted differed from jurisdiction to jurisdiction but included variously bishops, dioceses, parish priests, religious institutes and state and territory entities. The models continue to evolve to the present day governing flourishing schools which many see as the jewel in the crown of the Australian Catholic Church.

More recently the Australian Government's Royal Commission into Institutional Responses to Child Sexual Abuse made several telling recommendations:

*The bishop of each Catholic Church diocese in Australia should ensure that parish priests are not the employers of principals and teachers in Catholic schools.* Recommendation 16.6

The Australian Catholic Bishops Conference (ACBC) has accepted Recommendation 16.6 outright .

*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.* Recommendation 16.7

The Australian Catholic Bishops Conference has accepted Recommendation 16.7 in principle. The Truth Justice and Healing Council (Final Report Vol 2 p198) has advised this review should be undertaken by the Bishops' Implementation Advisory Group and publicly present its findings mid-2019 in the lead up to the 2020 Plenary Council where the ACBC has pledged to have governance as a major issue.

## Outline

This paper commences by defining the key concepts of governance, juridic persons, religious institutes, parish priests, systemic schools and non-systemic schools. This introduction is followed by an historical background to the origin of the current models of governance, including the challenges of post-war and post-Vatican Australia and the foundation of the modern systems.

The Church's social justice traditions give rise to foundational operational principles of Catholic organisations which are explained so that readers may share a common language when discussing the operation of the modern systems. These principles include subsidiarity, autonomy, collegiality, consensus, consultation and participation in decision-making, and authority. These operational imperatives give rise to a matrix of preferred principles for the structure and operation of Catholic systems and schools.

The issues to be addressed in reviewing the governance structures of Catholic schools in Australia include

- Compliance with both canon law and civil law
- The Royal Commission's findings on Church structures and operations
- The growing accountabilities to statutory authorities
- The statutory formation of governors
- The declining numbers of religious
- The declining numbers and capacities of parish priests
- Funding uncertainty through the Gonski Reviews
- The movement to Self-managing or Independent Public Schools.

Models of Governance available to address these issues include

- Central diocesan systems
- Devolution within central diocesan systems
- Associations of Delegated Canonical Administrators as Private Juridic Persons
- Individual or clusters of schools governed by Public Juridic Persons
- Incorporation
- Advisory School Boards
- Parish Priest/Associations of Canonical Administrators as Private juridic Persons.

The paper concludes by asking which of these models offer touchstones to fidelity to mission and the living traditions of the Church.

## Key concepts defined

### GOVERNANCE

Ancient Roman law and, subsequently, the Catholic Church's Canon Law traditionally vest governance with the holders of the deeds of a property. Governance 'refers to the exercise of authority or control; governance refers to the final decision-making authority of the "owners"' and management refers to the day to day operation of the organization' (Leavey 2001: 1). Governance of a school 'is about the legal and moral responsibility for and overall stewardship of the school: deciding its mission, vision and values and determining the overarching policies about how it operates' (Leavey 2001: 1). Governance concerns the custodianship of the spirit of the organisation as well as the maintenance of the material wellbeing of the organisation.

For the purposes of this paper, governance includes the civil and canonical responsibility for the goods and ministries of an entity and accountability for the entity's behaviours. This is in line with the NCEC understanding that governance refers to 'various authority structures, decision-making processes and lines of accountability and responsibility ... there are certain principles of Catholic teaching and practice that should infuse the governance of any Catholic institution' (NCEC 2002: 4). The enacting of these Catholic organisational and operational principles is a major issue within this paper.

### PUBLIC AND PRIVATE JURIDIC PERSONS

A Juridic Person is a legal entity under Canon Law that allows the Church's ministries to function in the name of the Catholic Church. Parishes, Religious Institutes, Dioceses and some Lay Ecclesiastical Groups are Public Juridic Persons (PJPs) established under Canon Law. (Cleary 2009: 1). In Canon Law, Catholic schools operate under the jurisdiction of an ecclesiastical Juridic Person, in practice either a Public Juridic Person such as a diocese, a religious institute or a parish; or a Private Juridic Person such as a group of parish priests established by the bishop as an Association of Canonical Administrators or an Association of Delegated Canonical Administrators which is a group of priests, religious and/or lay people established by the bishop to govern a school (Canons 115 & 116).

In the case of a diocese, the bishop is the canonical administrator of that diocese, while in the case of a religious institute, the congregational leader is the canonical administrator. In the case of parish schools, the goods of a parish as a Public Juridic Person are entrusted to the management of the pastor, the parish priest (Canons 515-552). The parish priest is the canonical administrator of the parish and the works of the parish (NCEC 2002: 7). Accordingly in Australia, from the 1870s the parish priest assumed the role of manager of the parish primary school, even when the school was staffed and led by religious.

Catholic trust corporations (i.e. property trusts) have been established by each of the dioceses for the purpose of holding, managing and dealing with property of the Church. With the exception of property managed by trust entities established by congregational leaders, trusts or corporation of trusts hold title to all school land owned by the dioceses and their parishes. Leasehold title is also held by these trusts which provide an efficient mechanism for dealing with real estate (Minter Ellison 2005).

Property trusts have been set up under Canon Law's guiding principles and disciplinary norms to govern the acquisition, use, administration, and disposition of the temporal goods of the Church (Canon Law Book V, canons 1254-1310). Temporal goods refer to non-spiritual assets, tangible or intangible, that are instrumental in fulfilling the mission of the

Church: land, buildings, furnishings, works of art, vehicles, securities, and other categories of real or personal property.

## RELIGIOUS INSTITUTES

A religious institute is a *society, either of clerics or laypersons, in which the members pronounce public vows, live a fraternal life in common, and carry out an apostolate in the name of the Church. These institutes include orders, congregations and other groupings.* (Diocese of Sandhurst, 2012). Schools owned and conducted by religious orders are often referred to as congregational schools, order-owned schools and, in some states and territories, as independent Catholic schools because they operate outside the diocesan Catholic education system.

## PARISH PRIEST

The Parish Priest is *the priest who pastors the faithful of a parish and administers it according to the law of the Church. Under the authority of the diocesan bishop he exercises pastoral care of the parishioners. The parish priest is the canonical administrator of schools of that parish (in Victoria and to a varying extent elsewhere). He is thereby responsible canonically and legally for those schools, appoints the principal, is the employer of school staff and delegates leadership and management of the school to the principal and staff* (Diocese of Sandhurst 2012).

Once appointed as Parish Priest, the Church law gives a priest a rightful autonomy as a canonical administrator. As a separate juridic person the goods of the parish belong to it (the parish) in canon law. (d'Apice: 2010) Directing, coordinating, moderating or governing a parish belong to a priest alone (ibid).

## SYSTEMIC SCHOOLS<sup>1</sup>

Systemic schools are administered by the 11 Catholic Dioceses in NSW and the ACT. In Queensland, systemic schools are administered by the four Catholic Dioceses. Each Diocese is headed by a Bishop who, under Canon Law, has responsibility for the quality of Catholic schools in his Diocese. This administration is managed through the Catholic Schools Authority/Office, which provides direct administrative and educational support to the schools in their Diocese. In systemic schools the employer of staff is the Diocesan Director of Catholic Education on behalf of the Bishop. In NSW, ACT and Queensland, systemic schools are also known as Diocesan schools.

Those schools in ACT, NSW and Queensland which are not managed by the diocesan system and Schools Office are known as independent Catholic schools and deal directly with governments and statutory authorities for most matters. Some independent Catholic schools apply for capital grants through the Independent Schools Associations Block Grant Authorities rather than the Catholic BGAs of their state or territory and receive their federal funds directly from Canberra. Researching schools' data through the Australian Curriculum, Assessment and Reporting Authority (ACARA) MySchool website affords an insight into how schools see themselves. *Loreto Kirribilli, founded on this site in 1908, is an Independent girls' Catholic day school from Kindergarten to Year 12. Kirribilli's sector, system or association is listed on ACARA's My School website as the Association of Independent Schools of New South Wales. Its sister school, Loreto Normanhurst, is entered as a Catholic, independent boarding and day school for girls from Years 5 -12, established in*

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<sup>1</sup> Source for ACT, NSW and Queensland definition of systemic schools: Catholic Systemic Schools in NSW and ACT: Foundations for Excellence

1897 by the Loreto Sisters (IBVM). Loreto Normanhurst's sector, system or association is listed on ACARA's My School website as the Association of Independent Schools of New South Wales. Santa Sabina College is an *Independent Catholic school for girls K-12, boys K-4, in the Dominican tradition* but its system is Catholic Schools NSW as is the case for many of the other schools independent of diocesan systems. Conversely, diocesan schools are registered on the ACARA website unequivocally as systemic in plain terms: *St Patrick's College Sutherland is a co-educational Catholic systemic school within the Archdiocese of Sydney.*

## Historical background to the origin of the current models of governance

### THE FOUNDATIONS OF CATHOLIC SCHOOLS IN AUSTRALIA

In the 1860s and 1870s in Australia, the withdrawal of state funding for church-sponsored or denominational schools in all states led to an almost total reliance on religious congregations to administer Catholic schools. The work of Tennyson Woods and Mary MacKillop greatly influenced this movement. The bishops' earnest desire to have a school in every parish had a higher priority than their desire to have a parish church. Thus was established the traditional Catholic enclave of church, convent, presbytery and school which was to be found throughout the country. In larger centres there was the addition of a separate school for boys and a 'monastery' for the religious brothers.

The zeal of the Australian bishops for the development of Catholic schools from the 1870s is attested to by the Bishop of Maitland at the Catholic Education Congress in Adelaide in 1936: 'In no duty in their teaching office have the bishops of the Catholic Church been so zealous, so exact, so wholehearted as in that which concerns the children of their flock, that is, in all that regards Christian education.' (Carroll 1989:17)

The goods of a parish are entrusted to the management of the pastor, the parish priest (Canons 515-552). Accordingly in Australia, from the 1870s the parish priest assumed the role of manager of the parish primary school, even when the school was staffed and led by religious.

In secondary schools, the governance was more complex, depending on the status of the religious congregation as diocesan or pontifical. Diocesan congregations were answerable directly to the local bishop while pontifical congregations were free from direct control by the bishop while still accountable to the bishop for Catholic orthodoxy. With the rise of religious congregations as the saviours of the parish school system in the late 1800s, certain dioceses insisted on only introducing congregations like the Sisters of Mercy that would answer to the local bishop. Pontifical status gave the congregation much greater freedom in the disposition of its members across the nation while disputes with bishops over this status led to splits within some congregations such as Mary MacKillop's Sisters of St Joseph. Bishop Matthew Quinn of Bathurst insisted that the sisters serving in his diocese would answer directly to him; thus a separate congregation of 'Black Joeys' came into being, named for the change from their brown habit to black to distinguish them from the pontifical congregation led by Mary MacKillop (Fogarty 1957: 295). The Christian Brothers had previously left Sydney in the 1840s because of Polding's desire for them to become a diocesan congregation (op cit 245) and at about this time they were granted pontifical status worldwide (op cit 295).

At the local level of parish and diocese there was the appearance of great autonomy for pontifical or papal congregational schools without the need for interference from parish priest

or bishop. Corrigan highlights the rich diversity of traditions supported by the different religious orders, in contrast to the regulation of a central bureaucratic model of organisation. Each order *brought its own strength, its own individuality. It is this individuality that gives such strength to the Catholic school system. There is no killing of the spirit by an impersonal central authority which demands that all things be everywhere done the same way.* (Corrigan 1936 cited in Carroll 1989: 19)

In effect the congregational models of organisation constituted the first systems of Catholic schooling in Australia. D'Orsa (1994:44) summarises the features of the diocesan system established by Fr Julian Tennyson Woods in Adelaide in 1867 following the withdrawal of state aid to sectarian schools. The five key elements were:

- the establishment of an organisational structure,
- the use of religious sisters to staff schools,
- shared responsibility between diocese, parish and congregation for the development of schools,
- a commitment to the needs of the poor and
- the promotion of 'Catholic schools'.

This model was adopted by many dioceses throughout Australia, with the chief variation being the formal relationship of authority between the religious congregation and the bishop.

The systems were a mix of central control and local autonomy. The orders exercised their own quite strong central control not only within a diocese but often across the entire land. This is exemplified by the Congregation of Christian Brothers. The central 'system' authority in Strathfield, in New South Wales, covered all of Australasia and included the appointment of staff (members of the religious order), the setting of school fees, permission for capital works, the laying down of the curriculum, the publication of textbooks, and the setting and marking of grade exams from Year One up to the first public examinations. The daily timetable for all the schools of a congregation was usually published nationally, if not internationally, in the order's directory or rule book (Fogarty 1957: 494-5).

Many think of the religious congregational model as a decentralised organisation of Catholic schooling. It was however their strong structural organisation that led to the effectiveness of the religious congregations in delivering the Catholic schooling so sought after by the bishops and people.

These systems, based on traditional Tridentine Church models of hierarchy and authority, flourished from the late 1800s to the 1940s in Australia, serving the needs of the Catholic Church and the country.

## **THE CHALLENGES OF POST-WAR AND POST-VATICAN II AUSTRALIA**

The 1950s post-war growth in potential Catholic enrolments and the number of lay teachers was accompanied by changes in the State's expectations of schools. For instance, the impact of the Wyndham scheme (1963) on the Catholic sector in New South Wales, in Sydney particularly, is well documented in Canavan (1986), Luttrell (1992), and D'Orsa (1994). D'Orsa quotes Bishop Geoffrey Robinson's summary of the dramatic response of Cardinal Gilroy to the comprehensive schooling and broad curriculum offerings demanded by the Wyndham scheme:

*In May 1964, in response to the newly introduced Wyndham scheme, Cardinal Gilroy announced that four secondary schools had just been completed, two were under construction, thirteen would begin construction in the immediate future and no less than*



*forty-seven would be enlarged and modernised – all at a time when there was no Government assistance. There was of course a price to be paid. Catholic people had to dig very deep, the sacrifices made by the religious were heroic, and priests found that much of their former role had been taken over by a new Building and Finance Commission, and later by the Catholic Education Office, as the Cardinal decided to centralise the finances, the organisation and the authority structure of the systemic schools in order to meet the crisis (D’Orsa 1994: 58).*

D’Orsa labels this decision in 1965 to centralise the financial management of the parochial schools ‘the beginning of Catholic systemic education in Sydney’ (ibid). The Catholic Education Office assumed the role of employer in parish and diocesan schools, taking on ‘a major share of the administration of most Catholic schools in Sydney, thereby creating a new system and itself becoming a large, complex organisation’ (Luttrell 1992). The decision sharpened the distinction between the order-owned schools and the parish-based systemic schools even though members of the same orders operated in both systemic and ‘independent’ Catholic schools. This model set Sydney apart from the other major dioceses as the Catholic sector moved further into crisis mode.

O’Brien (1996: 129) portrays the period 1969-1972 as the time when morale was at its lowest point. She summarises the major effects of the Second Vatican Council on Catholic education in Victoria as

- a debate about the authority of the bishops,
- a questioning of orthodoxy in the teaching of religious education and
- a challenge to the educational mission of the Church as it had been understood in Australia (O’Brien 1996: 130; cf O’Farrell 1985: 416-419, Selleck 1970: 2).

By 1972, 41% of Catholic children were being educated in government schools. The viewpoint held by Patrick Crudden, Director of Catholic Education for the Archdiocese of Melbourne in 1970, was that *the only realistic step for the church to take in the 1970s is to work on the assumption that the future of education in Australia lies with the state schools* (Selleck 1970:49).

At the time there was no authoritative forum or structure within the diocese, the state or the nation to bring together the parties responsible for the provision, administration and support of Catholic education. There was no meeting place for the parties holding *de jure* and *de facto* authority for the sector, namely:

- bishops,
- the Catholic Education Offices who acted as the bishops’ agents,
- the parish priests who were the canonical administrators and financial underwriters of the schools and
- the religious orders who provided the staffing and organisational structure.

The laity, the users of the schools and those paying for the upkeep of the system, had no access to decision-making processes for the sector. ‘The fragmented control and the lack of any authoritative spokesman on educational services was a major limiting factor in the operation of Catholic schools in Australia’ (O’Brien 1996: 37).

## **THE FOUNDATION OF THE MODERN SYSTEMS**

With this situation as its background, the first national conference on the administration of Catholic education in Australia was held at the University of New England (UNE) in Armidale in 1972. The conference grew from the realisation that a cohesive structure was needed

within the sector if it was to survive. Professor Bill Walker of UNE proposed two administrative models:

*one whose main theme is diocesan decentralisation as we know it today, at the other extreme national centralisation of all the Catholic schools in Australia into a superbureaucracy with one of the state education departments as a model. Somewhere on the continuum between these two poles lie the skeletons of one or two scenarios which might prove to be the very ones we are looking for (Walker 1975: 29).*

Bill Walker and Monsignor James Bourke led a widely-experienced group of presenters at this first national conference which included Tannock, Harman, McKinnon, Moore and Ross Thomas, and leaders within the Catholic education sector including members of religious congregations and Catholic Education Offices. The conference delegates sought a structure to meet all the expressed needs and challenges but one which uniquely incorporated the operational principles which were espoused in Church documents, particularly those of the recent Vatican Council, and found in the practices of their Australian experience of the organisation of schools.

The Second Vatican Council's deliberations had emphasised a return to scripturally-based principles of action. These blended well with the Church's social justice principles which had been developed from the time of Pope Leo XIII onwards. The Australian experience had been typified by localised structures and little diocesan or state centralisation of powers. The time had come to move on to a more systematic delivery of Catholic schooling. Walker preferred the tiers of local, diocesan and national level administrative structures whereas Tannock, agreeing on local and national levels, proposed a state rather than diocesan intermediate.

This conclusion of the 1972 Armidale Conference was the springboard for action in the establishment of parish, diocesan, state and national groups to systematise the delivery of Catholic education in Australia. In New South Wales, the Australian Capital Territory and Queensland, the diocese became the base for the system whereas in Victoria, South Australia and Western Australia, a state-wide system was established. Tasmania and the Northern Territory, each consisting of one diocese only, adopted models similar to the south-western states. Key differences in the models adopted include the exercise of the authority to employment: central, local or locally delegated with central ratification; and the relationship of the congregational-owned schools to the system authority: are the order-owned schools independent of the system or treated as part of the system at diocesan or state level?

## Operational Principles of Catholic Organisation<sup>2</sup>

Subsidiarity, autonomy, collegiality, consensus, consultation, participative decision-making and authority are terms in common use within Catholic organisations. It is usually assumed that leaders in Catholic education share an understanding of the meaning of these important operational principles. The following writings may be helpful in fostering an agreed understanding within the Catholic education sector.

### SUBSIDIARITY

Simply put, subsidiarity means decisions should be made at the lowest appropriate level, for instance the Australian Government's *Terms of Reference for the White Paper on Reform of*

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<sup>2</sup> This section has been published on the CECV website: [www.cecv.catholic.edu.au](http://www.cecv.catholic.edu.au) [CECV Strategy Plan 2015–2019](#). Some points have been amplified from other sources as noted.

*the Federation* defined the principle of subsidiarity ‘whereby responsibility lies with the lowest level of government possible, allowing flexible approaches to improving outcomes’.

Subsidiarity is referred to consistently in the charters of the various Catholic Education Commissions. Pope Pius XI enunciated the principle of subsidiarity in his 1931 encyclical *Quadragesimo Anno*. He is quoted by Pope John XXIII in the 1961 encyclical, *Mater et Magistra*, when John XXIII cites ‘the principle of subsidiarity’:

*It is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry. So, too, it is an injustice and at the same time a grave evil and a disturbance of right order, to transfer to the larger and higher collectivity functions which can be performed and provided by lesser and subordinate bodies (McBrien 1980: 1044)*

Schumacher (1973: 228) comments that the centre will gain in authority and effectiveness if the freedom and responsibility of the lower formations are carefully preserved. While devolution deals with the release of power from the centre or higher body to the local or lesser group, subsidiarity is based on the assumption that there is power that resides in the local community, for example that which resides in the Australian states and territories rather than with the Commonwealth in our Federal model. Where central coordination or collaboration will lead to a better result, the local bodies may choose to vote power to the central organisation which will represent their needs. This is somewhat at odds with the more recent interpretations of Alessandro Colombo (2004, 2012) who sees the higher authority ‘endowing individuals with autonomy and the resources to fulfil [*sic*] a responsibility for developing and delivering the services they need’ (Colombo 2012: 4). Thus Colombo’s premise is that the authority for action and decision-making resides initially with the higher power. Conversely a Catholic view of subsidiarity arises from the respect afforded each individual in light of a positive anthropology based on the Gospels and the Church’s social justice tradition as enunciated most recently by John Paul II (*Centesimus Annus*, par. 49) and Benedict XVI (*Deus Caritas Est*, par. 28); see Giorgio Vittadini (2012: 20). A key issue here is the difference between the intervention of the state for the common good and the inalienable rights of the individual/ lower order to determine their own fate.

*The Diocese of Sandhurst defines subsidiarity as the rights of individuals and community to develop their potential, exercise natural levels of authority and determine respective competencies. Each level of governance has the right to exercise authority without dominance of one level assuming authority in the other level’s decision-making processes. It is not equated with autonomy, but supports the interdependence of all, requiring that decisions are made at the most appropriate level (Diocese of Sandhurst, 2012)*

In terms of the evolution of the Catholic systems, it was stressed that *the momentum for the growth of any large central organisation should come largely from the component elements perceiving a need rather than from a self-expanding centre* (CECNSW 1980: 14.1).

This was further emphasised when the 1980 Australian National Catholic Education Conference sought to have any centralised structures for Catholic schooling:

*designed only to provide for such research, communications, governmental negotiations, reactions to legislation and public issues, statistics, professional services, public representations and high-level policy formulations, as cannot be effectively carried out at the local or parish level* (CECNSW 1980, 14.8.iv)

The principle of subsidiarity is evidenced in the terms of reference of the various state and territory Commissions of Catholic Education established since 1972. The CECV Constitution states that the:

*Company exists as a representative body and provides leadership, coordination and representation of Catholic education in Victoria through a range of services to providers of Catholic education in each Diocese and to the local communities. CECV Constitution 2012.*

The Catholic Education Commissions are respectful of both subsidiarity and local autonomy.

## **AUTONOMY**

Each state/territory Catholic authority is keen to respect the autonomy of its constituent members:

*The Catholic Education Commission of Victoria Ltd respects the autonomy of diocesan, parish and religious order levels of decision-making (CECV Constitution 1973).*

*As the Church is a communion of churches, then the central office (papacy) serves as a sign of that unity; in that the Church is a communion of churches the central office must respect the legitimate diversity of these churches, a collegial mode of decision-making, and the time-honoured Catholic social principle of subsidiarity, which holds that nothing is to be done by a higher group, agency or level of authority that can be done better or as well by a lower group, agency or level of authority (McBrien 1980: 835)*

*It is acknowledged that the operation and governance of Catholic schools rests with the local authority and is subject to oversight by a Bishop of schools in his diocese. The Company (CECV) is to act always with due regard for the autonomy of the dioceses and religious institutes, whether for matters within or beyond the competence of the local authority, for the good of Catholic education in Victoria and in fulfilment of its objects in clause 3.1 (CECV Constitution 2012).*

A particular area where autonomy is respected is that of the religious congregations and the schools that they own or administer:

*The Commission (SACCS), in its role of overall policy formulation, shall be sensitive to the special character of those schools founded and directed by a Religious Institute. It shall respect the right of the Religious Institute to direct the school. Conscious of the special charism of each Religious Institute as a gift to the Church, the Commission shall endeavour to foster that special expression of the elements of Catholic education which flow from that charism. In doing this it will be preserving that special pluriformity that has been characteristic of, and very special to, the history of the Catholic school (South Australian Commission for Catholic Schools 1987).*

Pluriformity refers to the variety of traditions and cultural expressions found in Catholic schools in Australia reflecting the backgrounds of the religious congregations invited into this country or founded here. These include Irish and French Church cultures, and monastic, Marian and Celtic spiritualities and practices. All add to the richness of the tapestry of Catholic schooling in Australia. Powers endowed by Canon Law and the ownership of property are other reasons for the ongoing consideration of the place of religious congregations within state and systemic structures.

Complementarity is defined as a 'complementary relationship or situation' in the Oxford English Dictionary and is exemplified by the capacity of two theories which together explain all phenomena of a certain type, whereas each separately only accounts for some of the

phenomena. An example of this is the use of the Wave Theory and the Particle Theory to account for the properties of light (Britannica Online). In Church circles, complementarity may be taken to refer to the use of diverse customs and practices originating in different traditions and cultures to enrich the Church's understanding of its own being and physical expression.

## COLLEGIALITY

Collegiality is the recognition of equality among partners in the mission of the Church. This principle sits well with complementarity, pluriformity and subsidiarity:

*The establishment of the Commission reflects an appreciation of the Church as 'communion' where all members of the Church have a contribution to make to its life and mission. We, the people, are the Church, forming a community founded on faith, worship and loving service, sharing the responsibility for the common mission of evangelisation, called to serve in different ways with different gifts, and to perform different tasks, but always with the same dignity* (South Australian Commission for Catholic Schools 1987).

Theologians define collegiality in almost exclusively episcopal terms, that is, as cooperation among bishops in the governance of the Church (Porter 1991: 82). Despite this 'it can be argued that the term collegiality can and ought to be used to refer to the corporate exercise of leadership at all levels of authority in the Church' (ibid). This latter usage has become common across Australia, particularly when talking of accepting professional responsibility for the enterprise of Catholic schooling. While some Australian bishops still prefer the narrower or more exclusive interpretation of the term 'collegiality', other stakeholders reference 'co-responsibility' as a consequence of the interdependence between schools within a system. This interpretation is used to justify the sharing of pooled resources between schools according to need. Thus the systems become laboratories of *'the globalisation of solidarity and charity* so as to grow, with the whole Church, in the co-responsibility of offering humanity a future of hope.' (Benedict XVI, *L'Osservatore Romano*, 24 August 2012).

## CONSENSUS

Consensus is commonly referred to in the documentation within the Catholic sector as the preferred model of decision-making. In the context of Catholic circles, consensus is seen as flowing from the dignity and autonomy of each individual and leading to the right of each individual to be heard in discussion and the best, generally agreed, proposition being followed. Williams (1983: 77) implies that the word has negative overtones – a policy of avoiding or evading differences or divisions of opinion in an attempt to secure the centre or occupy the middle ground.

Porter (1991: 97–102) draws on the earliest records of the Christian community, the Acts of the Apostles and the Pauline letters, to determine the source for a consensual and collegial exercise of decision-making. There he found the phrases 'we have *with one accord decided*' (Acts 15: 25), 'the proposal was accepted by *the whole assembly*' (Acts 6: 5) and 'the apostles and presbyters, *in agreement with the whole church, decided*' (Acts 15: 22). The Greek used for this agreement was *homothumadon*: literally, 'of one mind'. For this unanimity to be reached and for such decisions to be effective, two things are necessary: deliberative consideration and open-minded dialogue. The pronouncements of Vatican II were consensually derived through 'genuine dialogue wherein bishops representing contending points of view listened to each other and made compromises, each bishop modifying his point of view' (Porter 1991: 98). Democratic decision-making that may entail a brief discussion and a 'majority rules' vote appears simplistic when compared with the need

for time, for openness, and for informed debate associated with consensual decision-making. Consensus is facilitated by the sharing of a positive worldview and a commitment to the consensual process.

## CONSULTATION AND PARTICIPATION IN DECISION-MAKING

The Church's view of the dignity of each individual demands respect for the individual. This calls for consultation with those affected by the decision to be made. The old Canon Law said: *Quod omnes tangit ab omnibus approbetur* (Canon 5.95.5: 'That which affects all should be decided by all'). The 1982 Code of Canon Law emphasises the importance of consultative church government. Every diocese is required to have a senate of priests, a college of consultors and an administrative council while pastoral councils and synods are recommended. Their existence obligates the bishop to consult:

*These consultative bodies are not parliaments or boards of directors; they are consultative to the bishop, but the role of consultation is not a mere pro-forma action in church law. Consultation is so important that Canon 127 says that when consultation is required by law, the bishop acts invalidly if he fails to consult. He may, of course, act contrary to the advice, but the canon goes on to say that the presumption is on the side of majority consultation, particularly if a consensus is reached. In such cases the bishop should not act contrary to advice unless he has an overriding reason ... The Church is a people of God and our form of church government is episcopal and consultative rather than congregational and parliamentary (Griffin 1984: 21).*

There is no mention of the word 'democracy' in the Code of Canon Law. There are, however, 32 canons where consultation is recommended or required (Lucas 2008: 350). The need to spell out consultative processes to bishops is itself an indication of the hierarchical model of authority still in place in the Church. In Catholic schools the lay population could well experience unease at such a lack of democratic process, which they expect in their own society, and see reflected in the Church's respect for the individual in so many other ways. In the USA, Bryk notes such a paternalistic model is at best 'the approach of a wise and caring parent' (Bryk et al 1993: 300), but that 'the large number of lay faculty in Catholic schools has fired a democratising spirit that will surely raise questions about the continued appropriateness of this hierarchical form of leadership' (op cit). A shared sense of collegiality which arises from the intrinsic dignity of each member of the Church calls for collaboration and authentic consultation without diminishing legitimate authority (see Lucas et al. 2008: 352).

Cardinal John Henry Newman saw the Church as happier when its members participated in debate than 'when she cuts off the faithful from the study of her divine doctrines and the sympathy of her divine contemplations, and requires of them a *fides implicita*<sup>3</sup> in her word, which in the educated classes will terminate in indifference, and in the poorer in superstition' (Haines 1976: 32). Mary Benet McKinney osb names this discernment in the decision-making process as the concept of shared wisdom:

*Gathering the wisdom of the people who have the lived experience of whatever it is you are about and then allowing that wisdom, all its varieties to interact, to impact some of your initial thoughts and to make adjustments in order to hear the new wisdom. That's what my shared wisdom model is about (McKinney 2013).*

Weick (1969:103–104) raises his concern that widespread participation in the decision-making process can blunt the adaptive processes of an organisation. This is because groups are more willing to accept a compromise which has the appearance of being palatable to

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<sup>3</sup> Fides implicita corresponds to unquestioning belief or 'blind faith'

either contending viewpoint than to give ground fundamentally. Similarly, compromise may be an avoidance of healthy conflict within an organisation. Debate needs to be earnest and the polarised viewpoints respected if growth is to follow from the discussion. Ultimately, a consensually derived recommendation or decision may not reflect the wishes of all but it must have the public support of all.

## AUTHORITY

Principles concerning decision-making, respect and the exercise of power interrelate and can be problematic in practice. Those who have authority must exercise it at times and this could mean ignoring the advice of those consulted. If those with the authority to make decisions consistently go against the advice they have invited through consultative processes then they demean those consulted. If the system's participants adhere to the fundamental value of respect for each individual in the process then it is more likely that decisions will be made by the appropriate people at the appropriate level. The concepts of authority, autonomy, respect for the individual and collaboration all underpin the structure and operation of Catholic schooling in Australia. The authority of the bishop is central to the organisation of Catholic education:

*In the whole diocese or in given areas of it, the coordination and close interconnection of all apostolic works should be fostered under the direction of the bishop (Decree on the Bishop's Pastoral Office in the Church, n. 17).*

In the Code of Canon Law, Canon 806 defines the rights of a bishop concerning schools within his diocese:

*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.*

By virtue of his consecration and his communion with the Bishop of Rome, each bishop has the prime responsibility for the defence and transmission of the Catholic faith within his diocese. Organisations that wish to be recognised as Catholic must therefore accept his authority and seek his approval to call themselves Catholic publicly. This is enshrined in Canon 803 which defines a Catholic school as one that is understood to be:

*... under the control of the competent ecclesiastical authority or of a public ecclesiastical juridical person, or one which, in a written document, is acknowledged as Catholic by the ecclesiastical authority (Code of Canon Law, Canon 803).*

While the bishop is the legal authority for the provision of Catholic schooling in a diocese, he is obligated to consult widely and act responsibly with his partners in education (Griffin 1984: 21).

*If unity of spirit is to be promoted ... there must exist mutual esteem between all forms of the apostolate in the Church and, with due respect for the particular character of each organisation, proper coordination ... by the hierarchy. (Decree on the Apostolate of the Laity, n.23)*

This involves 'apostolic cooperation on the part of both branches of the clergy, as well as those of the religious and the laity' (*ibid*). A hierarchical model of authority is tempered by the exhortation to bishops to exercise authority as a service: 'In exercising his role of father and pastor, a bishop should stand in the midst of his people as one who serves' (Decree on the

Bishop's Pastoral Office in the Church, n. 17). Then those for whom the bishop is responsible will 'gratefully submit themselves to his divinely conferred authority' (*ibid*). In today's society, the concept of authority is a vexed one. Weber (1947) wrote of three pure types of legitimate authority whose claim to legitimacy rested on:

1. rational grounds – a belief in the 'legality' of patterns of normative rules and the right of those elevated to authority under such rules to issue commands (*legal authority*).
2. traditional grounds – an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under them (*traditional authority*).
3. charismatic grounds – a devotion to the specific and exceptional sanctity, heroism or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him (*charismatic authority*).

In discussing these types of authority, Pugh (1971: 15) offers explanations of the obedience owed in each case. The model adopted by the Catholic Church tends to be a combination of the legal and the traditional: authority in the church is established by virtue of office and by cultural norm. In the Code of Canon Law, Canons 375–411 deal with bishops. By consecration the bishop is responsible for sanctifying, teaching and ruling within his diocese (Canon 375) and he has all the ordinary, proper and immediate power which is required to carry out his office (Canon 381). He rules with legislative, executive and judicial<sup>4</sup> power in accord with the norm of law (Canon 391) and represents the diocese in all juridic affairs (Canon 393).

Until Vatican II, Catholic society had been raised to accept the authority of pope and bishop by virtue of the office to which they had been consecrated, but the culture of Australian Catholicism also had encouraged a personal docility to those in high office in the church. O'Farrell puts it thus:

*The bishops were determined, with implacable rectitude and totalitarian vigour, that their flocks were to be forced to be free – free from apathy and carelessness, and easy ways, and from the impulse to resist the will of the clergy* (Campion 1982:65).

Bishop Thomas Cahill, in 1959, condemned the tendency in Australia to diminish episcopal authority in a spirit 'of false democratism which regards all members of the church as equals' (Campion 1982: 65). Movements since Vatican II to participative decision-making or wide consultation may be seen to weaken this authority for some traditionalists, but the removal of this involvement once it has been offered is even more problematic to justify. In 1998 Cardinal Edward Clancy (Clancy 1998) reaffirmed the traditional source of authority in the church, the episcopacy, as being based on Jesus' mandate to his apostles and handed down through the sacrament of orders. In contrast, Swiss Protestant Reformer, John Calvin, used the term presbyterianism to describe the necessary and equal involvement of all members of the church in its decision-making (Porter 1991: 83). In the modern church, Cardinal Ratzinger (later Pope Benedict XVI) in Rome used the term 'protestantisation' and Clancy in Australia used the term 'creeping congregationalism' for the assertion of the laity that the church should be more democratic (Clancy 1998). Lucas (2008: 50) writes that governance in Church terms relates to the formulation of policy and the one who governs is responsible for policy.

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<sup>4</sup> Ordinary, proper, immediate, legislative, executive and judicial powers: technical terms which indicate that, for practical purposes, the bishop has supreme power within his diocese, subject to the stipulations of Canon Law. Few people associated with Catholic schools would be confident in challenging the bishop's legal authority.



*The understanding of right relationship between authority, power, and charism, is always subject to the cultural, sociological, and even ideological fashions of the time ... The modern world, in which democracy is an everyday experience, finds it difficult to understand an 'unelected' authority or governance by an individual. The tension between a hierarchical vision and a congregational vision of the church is ever present (Lucas 2008: 51).*

The Diocese of Sandhurst in its *Charter for Governance (2102)* defines authority as 'a legitimate justification and right to exercise government within the Church.' It then asserts that 'the ultimate power to govern is given in the sacrament of holy orders. Such authority cannot be delegated.' (Diocese of Sandhurst 2012). In defining co-responsibility as 'the common responsibility for the common mission of the Church shared by all its members through baptism' the Charter notes that co-responsibility 'is not to be confused with authority- the authority for governance remains with the ordained.' (ibid). These views appear to echo the words of Pope Pius X in his 1906 encyclical letter, *Vehementer Nos*:

*The Church is by its very nature an unequal society: it comprises two categories of person, the pastors and the flock. In the hierarchy alone reside the power and authority necessary to move and direct all the members of the society to its end. As for the many, they have no other right than to let themselves be guided and so follow their pastors in docility (Lucas 2008:1).*

In quoting Pope Pius X, Lucas says that it is incongruous today to read words such as these.

The use and abuse of authority are ever present in any understanding of the tensions between autonomy and accountability, both significant factors in the Catholic school sector.

## Matrix of preferred principles<sup>5</sup>

The post-1972 systemic relationships were to be established with respect for the Church's relatively recent social justice principles which had been clarified since the papacy of Leo XIII. These had grown from reflection on the gospels and been sharpened by a Church confronted by its experience of the extremes of Marxism and Socialism. Groome writes that these elements are significant in the shaping of the pastoral, spiritual and academic environment of Catholic schools, setting Catholic entities apart from others in their anthropology (concept of human nature), cosmology (concept of the world), community (concept of purposeful belonging), tradition (the source of meaning), rationality (belief based on experience), ontology (concept of the essence of being), sociology (the right ordering of society), and universality or catholicity (concept of inclusiveness) (Groome 1996). The Church's espoused operational principles are summarised as follows:

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<sup>5</sup> Source: The systematic delivery of Catholic schooling in Australia. PhD thesis of P.M. Casey, 2001

## PREFERRED FEATURES OF CATHOLIC ORGANISATIONS

subsidiarity	collaboration
shared responsibility	collegiality
appropriate local autonomy	respect for legitimate authority
appropriate responsibility to the local bishop	ownership through participation
shared mission and vision	accountability within the system
unity of purpose and conviction of all its members: its social glue	consensual decision-making
understanding of a specific concept of the world, of people, and of history	participative decision-making
value-judgements based on a specific view of the world	pastoral leadership
training of staff for their special tasks	accessibility

(Casey 2001:23-31)

Most of these principles are generally accepted as motherhood statements but there is a need for a common understanding of the meaning of each term as used in the original Church context. Subsidiarity and consultation are two of the most widely bandied about but misconceived concepts in Church entities. In practice these operational features are present to greater or lesser degrees according to the model of system adopted within a diocese or state.

The divergent models adopted in Australia post 1972, along with the locally dominant organisational principles and elements of decision-making stand to influence significantly the newly emergent models and their implementation post 2020. System responsibilities for accountability for public funding, for federal and state requirements, and for general governance are quite extensive.

There is a significant and clear distinction between the models adopted north and south of the Murray in the 1970s. New South Wales, Canberra-Goulburn, and Queensland adopted diocesan-based systems for reporting with a state-based Commission for Federal Government reporting. Western Australia, South Australia and Victoria adopted a state-based funding system as well as a state-based reporting Commission. Tasmania and the Northern Territory necessarily adopted a state/territory-based system but aligned with the operational principles of the south-west of the continent.

It is evident that in general terms north-eastern states have strongly centralised administration and employment within diocesan-based systems while the south-eastern regions have state-wide systems with more localised employment. The simple local model for governance of primary schools has persisted in Victoria to the present day with the parish priest as employer while in other states the role of employer has largely been vested in the Diocesan Director and delegated in many dioceses, particularly in South Australia, Western Australia and Tasmania, to the Principal. It is common for order-owned schools in the north-eastern states to operate independently of the diocesan system and for the south-eastern states to have almost universal coverage of the schools in the state, at least for funding purposes, regardless of ownership of the schools.

## Issues to be addressed

### **CANON LAW AND CIVIL LAW**

Canon law has a long history of co-existence with civil law. However, governments and other bodies and companies that Catholic schools deal with are not bound by canon law. Additionally, canon law is not designed to operate in the modern 'business' context. Conversely, in Australia civil law, parishes are not recognised as juridic persons but rather as unincorporated associations (d'Apice 2010: 2).

Civil law provides some useful auxiliary governance tools, such as incorporation, to help facilitate the aims of Catholic schools. This has been acknowledged by a number of schools that have chosen to incorporate. Much of what has been accepted as norm and custom within canon law has never been tested in civil law. In recent times however, canonical entitlements and responsibilities of parish priests have been questioned by civil authorities. Industrial courts have questioned Catholic school employment practices and processes and governments are now questioning the seal of the confessional. Civil law findings on ownership of land on which schools are built have had serious ramifications in schools previously deemed to be order-owned and independent such as St Pius X College in Chatswood. The bishop's right to appoint school leaders unilaterally has been challenged successfully by religious institutes such as in Wagga Wagga with far-reaching consequences. Lifestyle issues which were once seen to be critical for the integrity of the Catholic sector appear in many circles to be left unquestioned or absolved for pastoral reasons. Living within both canon and civil jurisdictions is becoming more complicated for those in governance.

### **ROYAL COMMISSION AND CHURCH ORGANISATIONAL STRUCTURE AND GOVERNANCE**

The Royal Commission into Institutional Responses to Child Sexual Abuse delved deeply into the Church's organisational structure and governance<sup>6</sup>. The Commission's findings offer some acknowledgement of welcome change:

*We accept that diocesan bishops and provincials of religious institutes are increasingly making use of professional expertise in the management of their various institutions, including in the administration of their responses to child sexual abuse. We also accept that the Catholic education and Catholic community services sectors have increasing lay involvement in their governance, operate professionally and are subject to significant government regulation.*

However, the general tone of their findings and recommendations speak for themselves about the minefield for those exercising authority in the Church and those operating ministries in the name of the Church:

*The governance of the Catholic Church is hierarchical. We heard that the decentralisation and autonomy of Catholic dioceses and religious institutes contributed to ineffective responses of Catholic Church authorities to child sexual abuse, as did the personalised nature of power in the Catholic Church and the limited accountability of bishops. The powers of governance held by individual diocesan bishops and provincials are not subject to*

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<sup>6</sup> Source: Royal Commission into Institutional Responses to Child Sexual Abuse Final Report and Recommendations

*adequate checks and balances. There is no separation of powers, and the executive, legislative and judicial aspects of governance are combined in the person of the pope and in diocesan bishops. Diocesan bishops have not been sufficiently accountable to any other body for decision-making in their handling of allegations of child sexual abuse or alleged perpetrators. There has been no requirement for their decisions to be made transparent or subject to due process. The tragic consequences of this lack of accountability have been seen in the failures of those in authority in the Catholic Church to respond adequately to allegations and occurrences of child sexual abuse.*

*The hierarchical structure of the Catholic Church created a culture of deferential obedience in which poor responses to child sexual abuse went unchallenged. Where senior clergy and religious with advisory roles to diocesan bishops or provincials of religious institutes were aware of allegations of child sexual abuse, often they did not challenge or attempt to remedy the inadequate responses of their bishop or provincial, or believed that they could not do so. The exclusion of lay people and women from leadership positions in the Catholic Church may have contributed to inadequate responses to child sexual abuse. In accordance with contemporary standards of good governance, we encourage the Catholic Church in Australia to explore and develop ways in which its structures and practices of governance may be made more accountable, more transparent, more meaningfully consultative and more participatory, including at the diocesan and parish level. We recommend that the ACBC conduct a national review of the governance and management structures of dioceses and parishes, including in relation to issues of transparency, accountability, consultation and participation of lay men and women (Recommendation 16.7).*

For the purposes of this paper on school governance, one of the most far-reaching recommendations is Recommendation 16.6 which states that *the bishop of each Catholic Church diocese in Australia should ensure that parish priests are not the employers of principals and teachers in Catholic schools.*

## **GROWING ACCOUNTABILITIES TO STATUTORY AUTHORITIES**

The accountability for public funds since the 1970s has seen a plethora of other responsibilities expected of schools and school systems including child safety, curriculum breadth, standards of teaching, registration of schools, registration of teachers and the legal responsibility for staff as employees. Catholic Schools NSW, similar to other commissions and Catholic Schools/Education Offices provides advice and guidance from a number of agencies including the following:

- NSW Department of Education
- NSW Education Standards Authority (NESA)
- NSW Ombudsman
- Office of the Children's Guardian
- NSW Advocate for Children & Young People
- Australian Government Department of Education & Training (AGDET)
- Australian Curriculum, Assessment and Reporting Authority (ACARA)
- Australian Charities and Not-for-profits Commission (ACNC)
- Australian Institute for Teaching & School Leadership (AITSL)
- Australian Skills and Quality Agency (ASQA)
- Australian Human Rights Commission
- Australian Children's Education and Care Quality Authority (ACEQA)

Failure to comply with the requirements of governments and their statutory authorities brings harsh penalties such as the cessation of funding, the cancellation of registration of a school or an individual teacher, the closure of overseas campuses, the withdrawal of not-for-profit

status and criminal prosecution to name a few. Few pastors and Church Authorities are in a position to keep abreast of these movements and there is growing need to aggregate or combine with others in this position if schools are not already systemic and their reporting needs met by a central service. The principles of subsidiarity and respect for local autonomy can be challenged when engaging with the emerging legal and ethical demands of risk management.

## STATUTORY FORMATION OF GOVERNORS

Another responsibility for governors of schools is that of the formation of its members and delegates. Good governance policies and procedures have always been an expectation in Catholic school circles but they are now being mandated. In January 2014<sup>7</sup>, the *NSW Education Act 1990* was amended to require registered non-government schools to have and to implement policies and procedures for proper governance. Each person defined under the Act as a 'Responsible Person' – and any other person or body exercising similar functions in relation to a school – is required to undertake initial and ongoing professional learning as a key aspect of proper governance, as follows:

- at least 12 hours over each three-year period in regard to governance issues from within three months of their appointment as a 'Responsible Person', delivered by a NSW Education Standards Authority (NESA) approved training provider (such as CSNSW), and
- an induction process for new Responsible Persons for a school including, at a minimum, the mandatory successful completion of a NESA approved training program delivered by a NESA approved training provider.

This imposition has the potential to work for the good of the schools in whatever model of governance they exist or to which they move. Ensuring that schools are governed by high calibre women and men with appropriate educational and corporate experience and qualifications is to the good of all.

## DECLINING NUMBERS OF RELIGIOUS

Since the 1970s the number of members of religious institutes within Australia has shrunk dramatically. Catholic Communications of the Sydney Archdiocese of Sydney detailed the transition of governance of St Clare's College in Waverley because of the order's inability to govern the school:

*One of the oldest Catholic girls' schools in Sydney will next year join the 100-plus systemic Catholic schools managed by the Archdiocese. St Clare's College at Waverley will pass from the Poor Clare Sisters who founded the school back in 1884 to the Catholic Education Office where from the start of next year the College will be the 148th systemic Catholic school under the guidance of the Archdiocese of Sydney. The decision to hand-over management of the school was first discussed with Cardinal Pell and Dr Dan White, the Archdiocese's Director of Schools by the Abbess of the Sydney-based Poor Clare community, Sister Joanne Fitzsimons osc in 2009.*

*"The Poor Clare community is only a very small religious congregation and operating a secondary school - which is our only one in Australia - in what has become an increasingly complex and challenging environment had become more and more difficult," Sr Joanne explained. She said that concerns over maintaining the financial viability of the college in*

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<sup>7</sup> Source: Catholic Schools NSW; Catholic Archdiocese of Sydney website

*light of potential changes and possible cutbacks in federal and state government funding were also factors in the community's decision.*

As the religious institutes move their personnel offshore or into retirement, what options do they have? As Carmel Leavey queried in 2000:

*Finally there is the ultimate question for congregations of what happens to their school/s when the congregation decides it can no longer take final responsibility. Is handing over ownership/governance to the local Catholic Education Office the only answer? Certainly this is what has happened to the majority of cases to date. Is the "independent" nature of our schools worth preserving? If so, how can we ensure this while at the same time wanting them to remain Catholic (Leavey 2000: 31).*

Leavey then went on to document potential resolutions of this situation. These included the aggregation of several institutes to share sponsorship, such as the transient Ward-d'Houet Board established by the Sisters Faithful Companions of Jesus (FCJs) and the Institute of the Blessed Virgin Mary (Loreto Sisters). Leavey also gave an excellent and detailed account of the debate about lay leadership and the possibility of the laity sharing in the Church's authority to govern (Leavey 2000: 35-39).

While diocesan systems have continued to absorb governance in place of religious institutes and parish priests, several religious institutes in Australia have opted to preserve their tradition through Public Juridic Persons (PJPs) and Public Associations of Christ's Faithful (PACFs).

The common thread through these latter developments entails accountability for the Catholic nature of the ministry, maintenance of the particular institute's charism or expression of the Gospels in action, and the accountability for public funding and other legal requirements of governments (Morrisey 2009: 12). Given the different models in operation in the north-east versus south-western regions of Australia, new cross-jurisdictional or 'national' systems experience different levels of receptivity to new models of governance, depending on how they are enlivened by the Church's operational principles, particularly subsidiarity, consultation and respect for the authority of the local ordinary within his diocese. Herein, the question of the personnel employed and their philosophic background and experience can undo the institute's best laid plans. The implementation of the roll-out of new models of governance is contextualised within a rich and diverse experience across different jurisdictions. This needs to be clearly understood from the outset.

A second issue for the PJPs is the level of reserve powers exercised by the religious institute and the potential for complexity to weigh down the new governance structure. Referred to by Leavey (2000:15-18; cf Cleary 2009:6) as two-tier and three-tier models with the institute being level one, the local ministry being the bottom level in a hierarchical model, and an intermediary governing body as level three. Some PJPs have added other levels. In the case of Edmund Rice Education Australia, the Congregation of Christian Brothers appoints a Council of five with lay and religious membership (EREA Council) as the canonical and civil authority. The Council in turn appoints a Board (EREA Board) with lay and religious membership to govern and to employ the Executive Director. The Executive Director in turn employs all other employees of the ministries (McGlaughlin 2009: 68-69). These PJPs are in their relative infancy but they vary greatly in their application of the espoused operational principles of the Church. Some appear to have adopted a systemic approach similar in many ways to a centralised bureaucratic model of operation while others have a 'light touch' approach to the core accountabilities on behalf of their predecessors, the religious institutes.

## DECLINING NUMBERS AND CAPACITIES OF PARISH PRIESTS

The declining numbers and increasing age of local clergy are self-evident. Some dioceses have sought to address this problem by inviting clergy from other countries including Asia and Africa to pastor the parishes and govern the schools.

The role of pastor is reserved by Canon Law to the ordained clergy. Canon 521 dictates

- §1. To become a pastor validly, one must be in the sacred order of the presbyterate.
- §2. Moreover, he is to be outstanding in sound doctrine and integrity of morals and endowed with zeal for souls and other virtues; he is also to possess those qualities which are required by universal or particular law to care for the parish in question.
- §3. For the office of pastor to be conferred on someone, his suitability must be clearly evident by some means determined by the diocesan bishop, even by means of an examination.

Canon 522 requires a pastor to 'possess stability'. Entry to the presbyterate requires the candidate to satisfy the Bishop of his high standards regarding doctrine, morals, and zeal for the wellbeing of others as well as his aptitude for leading a parish. Leading a parish effectively calls for familiarity with the unique institutional memory and fabric of Catholic education in Australia. There is evidence that in some dioceses there is a growing cultural divide between the Principal and the Parish Priest (VACPSP 2016: 12). Do Parish Priests have the capacity to fulfil the role of managers and employers as required by canon law? *Can. 1284 §1. All administrators ... must ... observe the prescripts of both canon and civil law or those imposed by a founder, a donor, or legitimate authority, and especially be on guard so that no damage comes to the Church from the non-observance of civil laws.*

In this age of growing accountability are the pastors competent?

Catholic Primary Principals in Victoria (VACPSP) believe that the Catholic school cannot achieve its mission and purpose without authentic and transparent accountability structures. In the current model of governance, both Parish Priests and Principals are vulnerable due to the lack of capacity of Parish Priests to effectively oversee the onerous educational and legal demands that schools face today (VACPSP 2018).

## FUNDING UNCERTAINTY

At the same time as new governance structures emerge, the discussion of models of Federalism of successive Australian Governments have driven more issues through the state government instrumentalities (Australian Government, 2014), making the Catholic sector's access to funding more complex. New accountabilities at both state and federal level have also added to the reporting requirements of individual schools and groups of schools or systems. These include the ACNC, ASIC and registration accountabilities. Labor Party policy on the funding of non-government schools has consistently been pitched at funding by need rather than by right (Starr 2010: 105, 114). The Gonski funding review instituted by then Minister Julia Gillard, and the Victorian Government Brack's review of funding mechanisms have major implications for the Catholic sector, but potentially dire consequences for 'independent' Catholic schools, many of whom are facing new models of governance, independent of the support of the diocesan and state systems. Given these schools generally have advantaged resource levels as measured by socio-economic standards (SES) and index of community socio-educational advantage (ICSEA), they would fail to attract funding on the basis of need. Thus the bureaucratic outreach of governments may call for greater consolidation of the Catholic sector, possibly at state rather than diocesan level to meet the needs of accountabilities and maximisation of attracting government funding to the sector. The future of funding has been fiercely contested at

Federal and state levels by Catholic Education Authorities. Opposition to the Turnbull government's 'Gonski 2.0' funding proposals led by the former Education Minister, Simon Birmingham, has led to the National Schools Resourcing Board review of the current SES score methodology. Under the Morrison Coalition Government, a new Education Minister, Dan Tehan, has acknowledged the shortcomings of the funding mechanism and offered significant extra funds as well as transitional funding for the implementation of a new mechanism.

The Australian Charities and Not-for-Profit Commission has been driving a case for increased and onerous accountability for deductible gift recipient status and tax exemption for Catholic entities as recognised charities and not-for-profit organisations. This is another pressure on securing the place of adequate resources into the future and of great concern for stand-alone employers such as parish priests in parish schools.

## SELF-MANAGING SCHOOLS

At a time when growing accountabilities appear to be calling for increased centralism in the Catholic sector, the government sector is driving devolution through projects such as the Victorian government's Schools of the Future and the Western Australia government's Independent Public Schools. These developments take their lead from the extensive writings of Brian Caldwell and Jim Spinks commencing with 'The Self-Managing School' in 1988. These movements are an example of government delegation and devolution rather than subsidiarity: we have central authorities permitting lower levels to decide by grace and favour rather than by right of the local entity which would come from recognition of the principle of subsidiarity. Regardless of the principle at stake, the liberating directions align with many of the preferred Catholic organisational and operational principles detailed above.

The Independent Public Schools<sup>8</sup> (IPS) initiative was introduced into the Western Australian public school system in 2009. The objective was to empower school communities by giving schools greater decision-making authority over key aspects of their operation such as staffing and budgets. Over 100 schools expressed an interest in being part of the program. A selection process determined that 34 schools were ready to operate with greater autonomy and were accepted as the first intake in 2010. Since that time there have been four further intakes of schools and in 2015 Independent Public Schools constituted 57% of all public schools in Western Australia and 70% of the students and staff.

Strengthened accountability arrangements were introduced for IPS in the form of a performance agreement between the Director General, the principal and the Chair of the School Board along with a periodic external school review by an agency independent of the Department of Education. These additional accountability mechanisms were accepted by principals as educationally fair and reasonable given the increased autonomy.

An important symbolic act of greater school independence was the elimination of the key reporting layer above the principals, which meant that IPS principals were, in line management terms, accountable directly to the Director General.

In 2013 an independent evaluation of the program was undertaken by a University of Melbourne team headed by Professor John Hattie. The evaluation team found that IPS had been successful in creating the conditions for improved student performance but further research was needed to understand how principals could use their increased flexibility and autonomy to make a difference in classrooms. The subsequent research undertaken was reported in 2015. Among the report's recommendations were:

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<sup>8</sup> Source: School Autonomy: Building the conditions for student success; final report of a research project of the Western Australia Department of Education, October 2015.



- The Department should continue to prosecute an *empowerment* agenda rather than simply an *autonomy* agenda. It would appear that one of the reasons for the success of the IPS initiative to date has been that decisions about implementation have been anchored in an empowerment paradigm. It has been the empowerment of principals in the case study schools that has seen them use their increased decision-making authority to have an impact in classrooms.
- The Department should expand the use of IPS principals in critical system leadership roles. It is clear from the 2013 IPS evaluation that the IPS principals are a significant asset in advancing the reform of the whole public school system. The principals in the case study schools are already providing a system leadership role in the way they are leading their schools, but the Department should explore further ways of harnessing the leadership capability of IPS principals in system reform.
- Future school leadership development programs need to equip principals with the *capacity* to build a professional learning community where there is trust, where teachers are motivated to improve their practice, where collaborative learning is structured, expected and supported, and where teachers embrace an action research orientation where they explore the differential impact of various teaching strategies. Such programs also need to support the development of an empowerment mindset amongst principals. Giving additional autonomy to principals who adopt a compliance orientation to their leadership will deliver limited benefits.

Is it possible that centralised Catholic systems could learn from these movements to self-management in line with the espoused organisational and operational principles of the Church?

## Solutions to be found in changing Models of Governance

Many of the issues confronted by individual schools and systems of schools are universal: they apply to all. Are there choices to be made between governance of individual schools and the collective governance of all schools as a system within a region, diocese or state/territory?

Any model of governance must adequately cover both civil and canon law requirements including:

- ownership of land which is the source of authority and responsibility civilly and canonically
- capital and recurrent debt
- accountability for the goods of the church entity
- accountability for receipt of government funds
- accountability for legislative requirements e.g. child safety curriculum breadth and standards of teaching, registration of schools, registration of teachers, occupational health and safety
- legal responsibility for the employment of staff
- appointment and formation of staff
- identification, selection and formation of leaders
- Catholic identity.

The question of ownership of land has been addressed to a large extent already through the trusts established by dioceses, congregations or incorporated schools. While the goods of the parish are canonically vested in the parish priest for the time being, the title deeds are held by the diocesan Roman Catholic Trust Corporation (RCTC). In Victoria the *Roman*

*Catholic Trusts Act 1907 (Vic.)* legislated for the establishment of the Roman Catholic Trusts' Corporation (RCTC) in the Archdiocese of Melbourne. This Act is replicated in all states and territories. Similar trusts hold the title deeds for religious institutes and other non-diocesan and non-parish public juridic persons. The parish may not acquire or alienate land without the approval of the RCTC Trustees. Ministries operated by religious institutes and their PJPs are similarly bound to apply to their relevant trustees to acquire or dispose of property, to assume debt or to sign significant contracts.

## CENTRALISED DIOCESAN SYSTEM

Recognising the diminishing capacity of parish priests to meet the civil and canonical responsibilities of school governance, one response is to establish direct authority for schools under the diocesan bishop with employment authority delegated to the diocesan director of education/schools. A recent example of this occurred in 2017 in the Diocese of Sale when Bishop Patrick O'Regan, having arrived from the New South Wales diocese of Bathurst in 2015, announced a 'Change of Governance of Catholic Education':

*Parish priests will no longer be the employer of staff or manager of school properties in Catholic schools in the Diocese. It has been agreed that a Company Limited by Guarantee will be established and a Board of Directors appointed to take over the management of all aspects of Catholic Education. The Board will report directly to me as the Bishop of the Diocese and Member of the Company. Day to day management of the schools will be delegated to the Director of Catholic Education (O'Regan 2017).*

This model brings the Diocese of Sale into line with the model adopted north of the Murray in the 1970s. In announcing the change of governance model, it is important to note that the Bishop consulted with the Parish Priests and Canonical Administrators with responsibility for schools in the diocese and had their unanimous support for the change. This is significant in that it respects the legitimate authority of the parish priests and canonical administrators in canon law. Each is in effect voting local power to the centre for the better achievement of the parish's goals to educate in faith. This is subsidiarity at work in its best sense. Those involved in the decision-making process also believed that, while freeing up parish priests to focus on pastoral, spiritual and faith formation aspects of their ministry, the new model would alleviate them from responsibility and personal legal liability in relation to the management of schools.

The Victorian Association of Catholic Primary School Principals has formally recognised the need for change to a new model of governance for Catholic Schools in Victoria. (VACPSP 2018). They recognise the need for the upskilling of principals and local board members as well as the coordinating role of the Catholic Education Offices. The Parish Priest would maintain his core function of faith formation support for the school community.

The Diocese of Toowoomba is facilitating the movement from parish priest to Catholic Education Office as governor, having commenced a process that is likely to have each and every one of its Catholic primary schools become a system-governed school, that is, governed by the Catholic Education Office (VACPSP 2016).

Because of the issues detailed above, the move to a central systemic model is attractive where the only alternative on offer has been governance by the Parish Priest.

## **PUBLIC JURIDIC PERSONS**

Many congregations have chosen to withdraw from their schools and hand them over to the established diocesan systems. Other congregations have sought to maintain the founding charism of their schools by establishing independent Church and civil authorities.

Increasingly, religious institutes and lay groups are forming new Public Juridic Persons (PJPs) to be responsible for the governance of their ministries and charitable works. (Cleary 2009: 1). Examples of PJPs established or being established in Australia include Mary Aikenhead Ministries for the Sisters of Charity including health, medical research, aged care, education and welfare (Dodds 2009: 57), Mercy Partners for the Sisters of Mercy of Queensland covering hospitals, aged care, schools and community services (Lupi 2009: 74), Edmund Rice Education Australia for the Christian Brothers' educational ministries (McGlaughlin 2009: 61), the Little Company of Mary Health Care for health, aged care and community care (Bugden 2009: 81), Trustees of Kildare Ministries covering education in Brigidine schools (and some schools of the Presentation Sisters), and Good Samaritan Education which is responsible for the ten incorporated secondary schools of the Sisters of the Good Samaritan.

The movement to the establishment of Public Juridic Persons is an acknowledgement by the religious institutes of the Second Vatican Council's declarations on the gifts, rights and responsibilities of the laity in the Church. PJPs provide an opportunity for the religious institutes to use their personnel in other settings where no alternative leadership in ministry is available such as in the developing countries, and of the reality facing some institutes that they are no longer in a position to offer leadership in the governance of their ministries.

Respect for legitimate authority is one of the Church's mainstays of organisational principles. Thus the owners of Church ministries will respect the Bishop's right to monitor the Catholic nature of schools and inspect them. Conversely, the bishop will respect the autonomy of the religious congregations to manage their schools subject to civil and canonical requirements.

The relationships between the bishops' agents in education, the Catholic Education Offices/Catholic Schools Offices, and the emerging PJPs and their staff are crucial to the ongoing wellbeing of Catholic education. There is great potential for division between systemic schools as identified with owners directly accountable to the (Arch)bishop and the congregationally owned 'independent Catholic schools' as they are labelled in NSW, Queensland and the ACT.

## **PARISH PRIESTS AS CANONICAL ADMINISTRATOR**

This model represents the status quo for many primary schools, especially in Victoria. In this model, legal responsibility for the operation of the school is retained by the Parish Priest as the Canonical Administrator with management delegated to the principal of the school. Associations of Canonical Administrators (ACA) are Private Juridic Persons established by decree of the Bishop to govern regional schools supported by several parishes with management delegated to the principal of the school with the support of an advisory board. The legal responsibilities lie with the parish Priest(s). As noted previously, the role of Parish Priest as employer has been the subject of adverse findings by the Royal Commission into Institutional Responses to Child Sexual Abuse. The future of this model is now politically unsustainable and the ACBC have accepted it must change.

## PRIVATE JURIDIC PERSONS: ASSOCIATIONS OF DELEGATED CANONICAL ADMINISTRATORS

The local (Arch)bishop may delegate his power of governance by establishing an Association of Delegated Canonical Administrators (ADCA) made up of clergy, laity and/or members of a religious institute. Canon 131 distinguishes between governance by right of law and by right of delegation thus: *'The ordinary power of governance is that which is joined to a certain office by the law itself; delegated, that which is granted to a person but not by means of an office.'* Each Delegated Canonical Administrator (DCA) is appointed in his or her right for the experience and skillset one brings to the role of governance.

As an alternative to establishing a group of Parish Priests as an Association of Canonical Administrators, this delegated model of governance has the capacity to address many of the issues facing both independent and systemic Catholic schools. Generally the land and building remain the property of the parish or diocese vested in the Roman Catholic Trust Corporation for the diocese. The ADCA's role is:

1. To act within the provisions of ordinary administration as defined by Canon Law and determined by the Bishop
2. To oversee and be responsible for the financial arrangements of the college including but not limited to:
  - a. Approving the budget
  - b. Entering into borrowing
  - c. Signing contracts
3. To appoint the Principal after ratification from the Bishop after a selection of process in line with diocesan policy. The president of the DCAs will sign the contract with the Principal
4. To be the employer of all staff according to the relevant industrial awards, civil legislation, diocesan policies and Catholic Education Commission policies.
5. To approve any major changes in the nature of the college
6. To carry out such further duties as are necessary to promote and sustain the purposes of the college.

In the case of diocesan schools operating within a diocesan system or regional colleges operating under an Association of Canonical Administrators at the bishop's decree (a private juridic person), an Association of Delegated Canonical Administrators opens the way for pastors to be pastors and for schools to exercise greater autonomy similar to the Independent Public Schools project. Issues identified with this model include the identification of suitable personnel with appropriate skillsets and experience to take on the roles with the Bishop's authority. In light of this problem it has been proposed that an ADCA might govern multiple schools with each member focussing on one particular school. This could be determined on a regional, experience or skillset base.

## INCORPORATION

Incorporation of a school is seen as a way forward for schools which are currently independent of the central diocesan system, such as those currently order-owned, or those governed by an Association of Canonical Administrators (Parish Priests) such as many regional colleges. In a devolutionary approach within central systems, incorporation could be introduced with the Church Authority or Canonical Administrator being the Bishop, working through his Diocesan Director of Education.

An incorporated association can be established under state specific legislation, which in Victoria, for instance, is the *Associations Incorporations Act 009 (Vic.)*, whilst a company

limited by guarantee can be established under the *Commonwealth Corporations Act 2001*<sup>9</sup>. Incorporation would still enable schools to integrate Canon Law requirements and provides guidance for the Catholic education sector's relationship with the Church and the broader Catholic community. Indeed incorporation will only work while governance structures continue to conform to Canon Law and preserve the Catholicity of the school. Provisions can be included in legal documents to preserve Catholic identity and character.

In this model formal authority would be delegated by the school's Canonical Administrator to a School Board, with all members appointed by the school's Canonical Administrator. There would not be any election of directors. The Board would be responsible for the operation of the school but not the ownership of assets which would reside with the trustees of the relevant trust corporation of the diocese, congregation or PJP. One or more Catholic schools could be governed by an incorporated board.

The role of the School Board is to govern the organisation, rather than manage it, which is the responsibility of the principal. It would set the major strategic direction, major policies and practices and oversee the management and operation of the school. Its roles and responsibilities are therefore in areas of policy-making, school improvement and accountability, budget and financial management, and the appointment and appraisal of the principal. These include determining the general educational policy, goals and priorities of the school; oversight of developing the school improvement plan in response to the self-review report and external review report findings; monitoring and evaluating the performance of the school in relation to goals and priorities; reporting to the school community and the diocesan and/or state Catholic Education Commission; approving and monitoring the school budget and ensuring consistency with the School Improvement Plan, and ensuring that the funds are expended for proper purposes; and making recommendations to the school's Canonical Administrator for the appointment of the principal.

The School Board's role in accountability would be evident through its approval of the annual school report and participation in the self-review, approval of the school improvement plan, as well as the regular monitoring and evaluation of the performance of the school.

As part of its role in monitoring and evaluating school performance, the School Board should receive regular reports on key performance data.

The Chair of the School Board would report to the Canonical Administrator often, in conjunction with the principal. The principal is accountable for the overall management and development of the school within state-wide (and diocesan based) policy directions and accountability requirements.

Some authorities are wary of incorporation because of the Board's potential legal independence of the Canonical Administrator. While this perception should be covered by the deed of incorporation and good governance practices, many Church Authorities shy away from civilly founded entities. Quite often, incorporation is reserved in a diocese for the diocesan property trust, the legal recipient of government recurrent funding (state commission) and the recipient of capital funding (Catholic Capital Grants Co). The establishment of a company limited by guarantee was required in the Diocese of Sale to act as employer of staff in their 2017 change in governance structure.

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<sup>9</sup> As incorporated School Boards are separate legal entities, members would not be liable for debts. Some State legislation imposes specific obligations on committee members relating to skill, care and diligence, avoiding of conflicts and acting honestly. These are in addition to fiduciary obligations to the general body of members. The process of incorporation is dictated by government legislation which specifies what constitutes an eligible company or association, the minimum numbers of members and the model or by-laws.

## ADVISORY SCHOOL BOARD

This model differs from an Incorporated School Board in that the Board is advisory without delegated authority for decision-making. It acts as a forum for discussion and advice to the principal and the parish priest or the canonical administrator concerning: the school's Catholic identity; building and maintenance; policy and planning; finance and fundraising; education and religious education; enrolments; selection of principal; and communication and accountability. All members are appointed by the Canonical Administrator or according to a Board constitution of the Canonical Administrator's approval. Some commentators see an Advisory Board as sharing in governance along with the principal and Church Authority but in reality it has no standing in law, civil or canonical. An Advisory Board does not address the major governance issues tabled above as confronting the sector.

## DEVOLVED DIOCESAN SYSTEM: CHANGING THE MODUS OPERANDI OF DIOCESAN SYSTEMS

A devolved diocesan system would see the Bishop as ultimate authority but delegating employment and accountability to his Diocesan Director of Catholic Education as in a centralised diocesan system. The Director in turn could devolve employment, finance and day-to-day management to the local Principal as in the Independent Public School model. Keys to success here include the selection and formation of principals and senior management, good officers assisting the Director, and clear roles distinguishing responsibilities and accountabilities. In some such instances, the Bishop might delegate canonical authority to appropriate lay people, religious and clergy to work with the Principal and local board of management. In this situation, many decisions could be signed off at the local level rather than having to be referred back to the Director, subject to civil and canon law requirements which would be clearly laid out at the time of transition of authority.

Hints of such devolutionary moves may be found in the 'Sydney Catholic Schools: Strategic Improvement Plan 2016-2018':

*Our Schools: Devolution, empowerment and responsibility for decision-making at school level increasing, where possible, the proportion of Catholic enrolments.*

*Our System: A more strategic, inclusive and collaborative approach to decision-making, change management and project development.*

Devolution within diocesan systems offers great hope to those schools and school leaders who have the aspiration and competence to exercise autonomy wisely as has been evidenced in the Independent Public Schools project.

## Touchstones to fidelity to mission and the living tradition of the Church

Which models are in harmony with the Church's espoused organisational and operational principles while adequately addressing the issues of the day including accountabilities to civil and canonical authorities? What models draw from the government schools' self-managing movement to devolution- should systems devolve to give greater autonomy?

Canon 1286 rules that administrators of the Church's goods, in the employment of workers, are to observe meticulously also the civil laws concerning labour and social policy, according to the principles handed on by the Church. Presumably this canon applies to schools as separate and systemic entities and so the Church's organizational and operational principles enunciated above should apply in the governance of schools.

As has been pointed out above, local governance is contextualised within a rich and diverse experience across different jurisdictions. There will be no one model of governance that fits all Catholic schools. The central diocesan system works well for many schools, including smaller, rural and remote schools who would be under-resourced as stand-alone entities. However, research indicates that, with appropriate checks and balances, basing organisational and operational principles on empowerment with local autonomy over key elements such as staffing, finance, enrolment, curriculum innovation and strategic planning pays dividends. These Church principles call for devolution within a central system, or respect for subsidiarity in independent settings who may vote power to the centre for what is better achieved in an aggregated body. The delegation of authority through an Association of Delegated Canonical Administrators can free system authorities and be efficacious in delivering positive outcomes at the local level.

Ultimately Catholic schools perform a great service to the nation, in the name of the Church. Building on the strengths of our Catholic tradition calls for insight and courage to change to even better models of governance.

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