



THE ARCHBISHOP OF BRISBANE

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Submission by the Catholic Bishops of Queensland and Catholic Religious Australia, Queensland to the Queensland Child Protection Commission of Inquiry

The Catholic Church is one of Queensland's largest and oldest faith based institutions. In living out the mission of Jesus Christ, the Catholic Church has become a major provider of religious, social welfare, education, health and employment services. The Church welcomes this opportunity to make this submission on such an important issue facing our society today.

This submission is being made by the Archbishop of Brisbane on behalf of the five Queensland Bishops and by the Vice President of Catholic Religious Australia, Queensland on behalf of all the Religious Congregations present in Queensland. The issue with which the submission deals and the scope of the submission are explained below.

The Issue

There was comment in the press in mid August 2012 that the Queensland Child Protection Commission of Inquiry (QCPCI) was seeking submissions from Clergy and other faith based organisations on the issue raised by the QCPCI about whether Queensland religious leaders or groups should be compelled to report suspected cases of child abuse in the future.

The Position of the Archdiocese of Brisbane

The Catholic Archbishop of Brisbane, Most Reverend Mark Coleridge, was asked for comment by the press and released a statement in the following terms:

"The Roman Catholic Archdiocese of Brisbane would support statutory change to introduce mandatory reporting of cases of suspected child sex abuse. The Archdiocesan Education authorities already comply with similar statutory mandatory reporting.

The issue is more about who should be under the statutory obligation. I would be happy for representatives of the Archdiocese to engage with the Inquiry led by the Honourable Tim Carmody SC to help identify appropriate persons within the Church who should be the subject of the statutory obligation. I will therefore ask the appropriate people in the Archdiocese to prepare a written submission for the Inquiry on this issue.

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The sexual abuse of the young is a heinous criminal offence. Clergy or others in authority within the Church who are guilty of this crime have no place in Church Ministry and should be subjected to the full processes of the criminal law. It is appropriate that suspected cases of such abuse be reported to the police so that they can be fully investigated with a view to justice being done."

In addition to the above statement, the Archdiocese would add that there needs to also be a provision which protects the seal of the Sacrament of Penance.

Scope of this Submission

This submission is limited to a consideration of matters pertaining to the general life of the Church including Parishes but not to Catholic schools. As was indicated in the Archbishop's statement, the Church Education authorities already comply with statutory mandatory reporting of these matters. The Queensland Catholic Education Commission is making a separate submission to the QCPCI relating particularly to issues arising in the education context. In addition to education some other services in the Church, in particular, some of the social welfare ministries, are also subject to a legislated reporting requirement.

The issue for consideration of the QCPCI is whether statutory mandatory reporting should be extended. As Archbishop Coleridge has made plain in his above statement, the Archdiocese supports the extending of the statutory mandatory reporting requirements.

This submission is also in response to Question 47 "*What other changes might improve the effectiveness of Queensland's child protection system?*" included in the QCPCI Discussion Paper released on 18 February 2013.

The Structure of the Church

It is first necessary to explain briefly the structure of the Catholic Church within Queensland. The Catholic Church is divided into Dioceses, with the Bishop being the leader of the Diocese. The Archdiocese of Brisbane and the Dioceses of Toowoomba, Rockhampton, Townsville and Cairns comprise the Province of Brisbane. Within each Diocese the Church consists of parishes, religious congregations and other Church organisations. Members of the Church generally belong to parishes and are called parishioners. As well as the Bishops the other main leadership group are the leaders of the many Religious Congregations who work together as a Conference called Catholic Religious Australia, Queensland.

Each Parish is led by a Parish Priest or Parish Administrator who is responsible to the local Bishop for the administration of the Parish. Parishes are also staffed by non-clerical workers. Some of these are Religious Sisters and Brothers and others are lay people. In this submission both non-clerical Religious and lay Parish staff will be referred to as "lay Parish staff".

Apart from Parishes, the Church is involved in a wide range of other religious, social welfare and health services. These services are carried out mainly by Dioceses and Religious Congregations but also by other Church organisations.



Voluntary Reporting

The Church has for some years had in place a process for dealing with complaints of child sex abuse. The document is called *Towards Healing*. That document provides for a process for dealing with complaints. The complaints handling process is administered in each State and Territory by a Director of Professional Standards. *Towards Healing* in paragraph 37.4 provides as follows:

“In the case of an alleged criminal offence, if the complainant does not want to take the matter to the police, all Church personnel should nonetheless pass details of the complaint to the Director of Professional Standards who should provide information to the Police other than giving those details that could lead to the identification of the complainant.”

In some States arrangements are in place for statutory mandatory reporting of criminal behaviour but for other States and Territories the *Towards Healing* document provides for voluntary reporting to Police of “an alleged criminal offence”.

The current Director of Professional Standards for Queensland has recently completed an audit of the files opened by him since 1 November 2009 when he commenced in the role. He has identified those matters which under paragraph 37.4 of *Towards Healing* should be the subject of voluntary reporting and he recently passed on the relevant details to Queensland Police. Accordingly, there has been voluntary reporting of alleged criminal offence matters which have come to the attention of the Director of Professional Standards Queensland since 1 November 2009.

Who should have the statutory reporting obligation?

If statutory mandatory reporting were to be introduced to cover knowledge or suspicions of sexual abuse of minors occurring in a parish setting or other Church activity outside of education, a statutory obligation could be imposed on those working (both paid and volunteer) for the Church to make a written report to the local leader who then would be obliged by statute to give the report to the local Bishop, or Congregational Leader.

It is most important on account of the size and structure of the Church within Queensland that the ultimate reporter (the local Bishop or Congregational Leader) have the ability to delegate this responsibility. It is noted that the legislation containing the mandatory reporting regime for Non-State Schools (*Education (General Provisions) Act 2006*) provides at Section 366B for the director of a school’s governing body to delegate the reporting function.

The suggested nature of the reporting obligation

The method referred to in the last preceding paragraph is modelled on the process that applies to reporting in non-State Schools in Queensland and it will be familiar to Government. Sections 366 and 366B of the *Education (General Provisions) Act 2006* are the relevant provisions. They have been in place in Queensland for a number of years and have been effective. The purpose and intent of the sections are widely known and understood. A staff member of a non-State school who becomes aware of or reasonably suspects that a student under the age of 18 has been sexually abused must give a written report to the school Principal or a director of the school’s governing body. The school Principal or director of the school’s governing body is required to immediately give a copy of such report to a police officer.



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The proposal is that the relevant local Bishop or his delegate, or the Congregational Leader would have the statutory obligation to pass the written report to Police.

From 29 January 2013 s366A of the same Act requires school staff to report the knowledge or reasonable suspicion that a student under the age of 18 years is “likely” to be sexually abused. This provision was introduced following research from academics from the Queensland University of Technology who, identified that the particular relationships which developed between students and teachers meant there may be situations where such teachers become privy to information which would enable them to develop a reasonable suspicion that a student was “likely” to be sexually abused. Relationships between clerics or lay persons involved in Parish Ministry and children and young people within the Parish setting would not normally be of a nature to allow the development of such reasonable suspicion.

Accordingly, the provision of s366A of the Education (General Provisions) Act 2006 should not be extended to the Parish or broader Church setting.

Denominational Differences in Pastoral Structures

One difficulty the Government would face in legislating would be that each Christian Denomination has its own different organisation, administration and structure. The Catholic Church would be happy to work with the Commission or with Government should the QCPCI or Government want to consult more widely with the Christian Churches on this issue.

The QCPCI should also be aware that there is considerable ecumenical good will and co-operation in Queensland and that the organisation Queensland Churches Together has a wide membership amongst the Churches. It may be that consultations with an organisation such as Queensland Churches Together could assist the QCPCI or the Attorney General to identify the best way to structure the legislation in order to deal with the variety of Denominational structures.

Reporting Obligation should be on those in active Church ministry

It would serve the interests of the community if the regime for statutory reporting was as efficient as possible and it would assist the Church if the regime recognised Church structures and made efficient use of administrative arrangements already in place. For that reason, the reporting obligation would best be imposed upon those in actual parish and other Church ministry (both clerical and lay) and not on all clergy generally. For example, many clergy are advanced in age and retired from active ministry.

Commitment of the Catholic Church

Underpinning Archbishop Coleridge’s earlier statement is a recognition that there is a public expectation that no matters of an alleged criminal nature should be kept secret by anyone in authority in the Church. The Catholic Church stands ready to work with both the QCPCI and the Government of Queensland so that a most efficient mechanism for statutory reporting of alleged criminal offences relating to the sexual abuse of children, can be passed into law at an early time.



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The Seal of the Sacrament

One issue that warrants special mention is the Church's belief and discipline around the seal of the Sacrament of Penance. This has been the subject of much public comment over recent months. The joint submission of the Catholic Bishops of Victoria and Catholic Religious Victoria to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations is entitled "*Facing the Truth*". It may be accessed at <http://www.cam.org.au/facingthetruth/Parliamentary-Inquiry.aspx>

In section 15.4 on page 106 it summarises the Catholic Church's position on the inviolability of the seal of the Sacrament of Penance. What a penitent says to a Priest under protection of the sacramental seal is said to have passed within the "internal forum". It is the absolute sanctity of what passes between penitent and Priest in the internal forum that the canon law provisions there quoted are designed to protect. Civil Laws which put at odds this Catholic position ought be avoided on the ground that our civil society is one that respects the religious freedom of its citizens. Religious freedom is commonly understood to protect freedom as to belief and as to practice in both public and in private.

Some of the comments in the "*Facing the Truth*" submission are specific to Victoria and its laws. However, they accurately explain the position of the Church on this issue. **Attachment 1** to this submission is the relevant extract from "*Facing the Truth*" submission.

Support for Mandatory Reporting

The Bishops of Queensland and the Leaders of Religious Congregations in Queensland support the extension of current arrangements for mandatory reporting of knowledge or reasonably suspicion of sexual abuse of a person under the age of 18, or a person with a disability, to include clerics and other staff actually working within Parishes or other ministries, and the relevant local Bishop or his delegate and Congregational Leader, subject to a provision which protects the seal of the Sacrament of Penance.

The Catholic Church stands ready to assist the QCPCI or Government to mould the appropriate legislative provisions to best capture the categories of personnel to which the mandatory reporting obligation should attach (along the lines outlined on pages 3 and 4 of this Submission).

On behalf of the
Queensland Bishops

Most Reverend Mark Coleridge
Archbishop of Brisbane

On behalf of Catholic Religious
Australia, Queensland

Sr Libbey Byrne RSC
Vice President



Attachment 1

EXTRACT FROM “FACING THE TRUTH” submission by Catholic Bishops of Victoria and Catholic Religious Victoria to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations 21 September 2012

Section 15.4 Sanctity of Confession

The absolute sanctity of confession is enshrined within Catholicism. The confession is understood as being made to God. The priest to whom the confession is made is representing the person of Christ. Consequently, admissions made to God through the priest are not the priest's to reveal.

Canon 983 §1 states:

The sacramental seal is inviolable.¹ Accordingly, it is absolutely wrong for a confessor in any way to betray the penitent, for any reason whatsoever, whether by word or in any other fashion.

Canon 1388 §1 further states:

A confessor who directly violates the sacramental seal incurs a latae sententiae [automatic] excommunication reserved to the Apostolic See; he who does so only indirectly is to be punished according to the gravity of the offence.

Accordingly, a confessor who directly violates the sacramental seal is subjected to the most extreme penalty available under Canon Law – excommunication. As such, compliance is not optional for priests.

The sanctity and confidentiality of the confessional is reflected in the 1994 address to the Apostolic Penitentiary by Pope John Paul II who stated: “*The priest who hears sacramental confessions is forbidden, without exception, to reveal the penitent's identity or sins.*”

The Catechism (i.e. teachings) of the Catholic Church provides as follows:

§1467: *Given the delicacy and greatness of this ministry and the respect due to persons, the Church declares that every priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents' lives (Canon 1388 §1). This secret, which admits of no exceptions, is called the “sacramental seal”, because what the penitent has made known to the priest remains “sealed” by the sacrament.*

§2490: *The secret of the sacrament of reconciliation is sacred, and cannot be violated under any pretext. “The sacramental seal is inviolable; therefore, it is a crime for a confessor in any way to betray a penitent by word or in any other manner or for any reason (Canon 983 §1).*

¹ The confessor may never, for any reason, divulge what he has learned in the course of celebrating the sacrament. Should he do so, he commits a most serious offence. See Canon 1388 §1.



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The sanctity of confession is respected in all Australian jurisdictions as well as in most other locations around the world. Further, legislation throughout Australia provides a specific privilege in respect of religious confessions.

In Victoria, section 127(1) of the *Evidence Act 2008* (Vic) (**Evidence Act**) states:

A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.

Religious confession is defined in the Evidence Act as:

A confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the church or religious denomination concerned.

In addition to being inconsistent with the Evidence Act, legislation purporting to override the sanctity of the sacramental confession would conflict with freedom of religion as recognised by the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**).

Section 14(2) of the Charter, concerning freedom of religion, provides that:

A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Any legislative amendment that purported to require priests to violate the sacramental seal of confession will be ineffective as priests will simply be unable and unwilling to comply.

In democratic societies, it has historically been extremely rare for Canon Law and domestic or civil law to contain inconsistent provisions. However, Canon Law is clear that a priest's Canonical obligations override inconsistent obligations purportedly imposed by civil law.

The desire to do everything possible to protect children from abuse is certainly compelling. Mandatory reporting of child abuse is an important part of this vital task. However, if the sanctity of confession could not be assured, it becomes unlikely that anyone would confess to the terrible sin and crime of the abuse of children.

An important dimension of confession is that it gives the penitent a chance, and perhaps the only chance they are open to, to confront the terrible nature of their behaviour. The imposition of mandatory reporting, and the subsequent removal of the confidentiality of confession, would remove any hope that this outcome might eventuate. Abusers will not take the risk of revealing their crimes in this forum.

However, if an offender discloses information about any crime to a priest, it is wrong to assume that the priest would do nothing. On the contrary, the priest has a clear and unquestionable moral obligation to seek to ensure that justice is done. One primary response of a priest in such circumstances is to encourage the penitent to confess to civil authorities. In the absence of such confession, or such other steps as are appropriate to ensure that justice is done, absolution that is, forgiveness sought by the penitent may be withheld.



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Accordingly, the destruction of the confidentiality of confession would result in the loss of the opportunity for the offender to be encouraged to go to the police, to obtain assistance for the victim, to seek help to cease offending, or to take other appropriate action. It is also important to note that it is extremely unlikely that a confession of child abuse would contain sufficient information to be useful in a mandatory report. The penitent would be free to choose anonymity, and could confess a sin without disclosing locations, times or the names of victims.

As set out in Chapter 7, the Victorian Parliamentary Crime Prevention Committee expressly stated in its Report to the Inquiry into Sexual Offences against children and Adults, that it:

Did not wish to question the sanctity of the confessional and the confidentiality offered to those who choose to cleanse their souls in such a way.

During a media conference on 18 July 2012, the Victorian Premier, the Hon Ted Baillieu MP, commented on the Report of the Protecting Victoria's Vulnerable Children Inquiry and stated:

The Cummins report addressed this issue and concluded that the sanctity of the confessional should remain, and I think that's a powerful argument.

In August 2011, the Victorian Attorney-General, the Hon Robert Clark MP, stated that the Victorian Government had no plans to introduce mandatory reporting for information divulged during confession and that, in any event:

It would face a range of difficulties, because if churchgoers thought a priest would report what was said in the confessional, they would either not confess to crimes or would ensure their confession was anonymous.

The Church notes that in South Australia, section 11(4) of the *Children's Protection Act 1993 (SA)* exempts "a priest or other minister of religion" from the mandatory reporting obligations imposed under the Act in relation to "information communicated in the course of a confession made in accordance with the rules and usages of the relevant religion".