

Submission

to the

Legal Affairs and Community Safety Committee

regarding the

**Criminal Code (Child Sexual Offences Reform) and Other
Legislation Amendment Bill 2019**

Clause 25 - proposed s229BB and s229BC Criminal Code

*Catholic doctrine of Seal of Confession
is not incompatible with proposed
Mandatory Reporting / Failure to Report laws*

January 2020

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1. Executive Summary

Recommendations

I respectfully request that:

1. the Committee recommend that the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019* (the Bill) be passed with amendment (as per 2 below).

2. the Committee recommend that the bill be amended to include amendments to section 13E of the *Child Protection Act 1999* and elsewhere as required to include in the list of Mandatory Reporters those categories of workers as per Recommendations 7.3 and 7.4 of the *Final Report* of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission):

- out-of-home care workers (excluding foster and kinship/relative carers)
- youth justice workers
- registered psychologists and school counsellors
- people in religious ministry
- any person associated with an institution

and that further included are:

- school chaplains (as ‘chaplains’ often are not teachers, counsellors, nor in ministry)

3. the Committee commend to the Parliament the *Final Report* and the *Criminal Justice Report* of the Royal Commission, in particular Recommendations relating to:

- Mandatory Reporting (including the additional categories of mandatory reporters);
- Criminal offences of Failure to Report and Failure to Protect (including that there be no exemption for information obtained during a religious ‘confession’)

Summary of key facts regarding Catholic doctrine of secrecy of the confessional

- Catholic Doctrine of Confessional, including the secrecy component, is not explicitly directed by the Bible; it was invented by men and was formalised by a committee in the 13th Century. The Catholic Church has existed for longer *without* the formal canon of the Doctrine of Confession than it has existed *with* the formal canon of the Doctrine of Confession.
- The few Biblical references to confession actually refer to confession being a *public* act rather than a secret act, whereby sins are disclosed communally for the purpose of the community assisting the sinner with the delivery from temptation and from further sinning. This is opposite of the Catholic Doctrine of Confession.
- The Catholic Doctrine of Confession is not unchangeable – many canon laws have been amended and even deleted over the years. The most recent version in Australia is from **1983** amended again in **1989**. Further, the President of the Council of Bishops has previously informed Queensland Parliament that one of the rituals of confession has been dropped for reasons of convenience. So the practice and the doctrine of confession is amendable.
- The current wording of the Doctrine is already open to being interpreted to be compatible with Mandatory Reporting and Failure to Report legislation if Australia's Catholic leaders are so motivated toward that interpretation. The Doctrine requires that a person be genuinely '*penitent*' and '*seeking amendment*' for the confession to take place – a person causing their victims to continue to suffer by refusing to make full admissions to police is not genuinely penitent nor seeking amendment and so a true 'confession' has not occurred. Information has been shared but no 'confession', so confidentiality would *not* apply to the information shared.
- There is already precedent under the existing Catholic Doctrine of the Confessional that the giving of absolution be made dependent on the 'penitent' taking some form of *public* restorative action. When confessing to false accusation of adultery, canon 982 requires that the person *publicly* recant their accusation, in order for the 'confession' to be valid and absolution be granted. While that is a requirement for the 'penitent' to publicly report, rather than the priest reporting, it nonetheless shows a long-established precedent that *the Catholic Doctrine of Confessional has already been modified to require public reporting*. This can be simply extended to the 'confessor' clergy reporting child abuse to the police.

- Supporting this concept even further, the Pope of the Roman Catholic Church has, in May 2019, issued a Papal Decree that all clergy are to comply with local civil/secular Mandatory Reporting laws. This means that Catholic clergy are now permitted by their Church, by direction from the Holy See, to comply with Mandatory Reporting and Failure to Report laws once passed in Queensland. It means Catholic leadership can no longer threaten a priest with being excommunicated from the Church for properly reporting information obtained via confessional. They cannot be excommunicated for complying with a Vatican instruction. It means clergy no longer need to decide between honouring their responsibilities to keeping children safe versus honouring their vocational oath to follow the rituals and doctrines of their Church. They have an instruction from the Pope to obey the local secular law.
- The Anglican Church have led the way since 2014, amending their Doctrine of Confession to exclude secrecy from information pertaining to child abuse and certain other serious offences.
- There is a difference between *sins* and *crimes*. Sins are perpetrated against God and/or the Body of the Church depending upon the specific denomination's doctrine. Crimes are perpetrated against a person and/or against the State. A certain behaviour might be both a 'sin' and a crime. It may be appropriate within the context of a particular religious belief to forgive the sinful element of the behaviour, however it is never appropriate to misuse the religious belief or practice to 'forgive' the criminal element of the behaviour – the criminal element cannot be remedied by confession and absolution. The criminal element of the behaviour can only be remedied according to the secular laws of the State and/or in accordance with the needs of the victim against whom the crime has been perpetrated. This confusion by religious leaders between 'sin' and 'crime' has been a significant contributor to the culture of concealing child abuse crimes and using the 'seal of the confessional' and 'absolution' to cover up the widespread and repeated abuse of children by Catholic clergy.
- Mandatory Reporting, Failure to Report and Failure to Protect laws allow churches to 'forgive' sins and minister to the sinner, while ensuring crimes are also properly dealt with according to the law and child protection measures are able to be properly implemented.

2. Request for anonymity/non-publication of identity

I request that the Committee make this submission public so that stakeholders are able to read the contents and provide responses (whether to support or rebut elements of this submission) to contribute to democratic debate on the bill; however, I ask the Committee to redact all identifying personal details (eg, name, age, occupation) to respect my privacy and also to comply with relevant privacy legislation including:

- Section 10(1)(a) of the *Criminal Law (Sexual Offences) Act 1978* (Qld)

Any person reading this Submission who knows me or is able to identify me from its contents is hereby reminded of their obligations under law including:

Section 10(1)(a) of the *Criminal Law (Sexual Offences) Act 1978* (Qld) prohibits

any person from disclosing to **any person, at any time**, my:

- name, address or employment;
- **any other particular** that is likely to lead to my identification

An offence is punishable by 2 years imprisonment.

The reason for my request for anonymity is because I would like to retain the opportunity for my life to be defined by what I achieve as an adult, not by what was perpetrated against me as a child.

I accept full accountability for my evidence and am available to give direct testimony to the Committee (*in camera* requested) should that be of assistance to the Committee.

3. Qualifications and background

My name is [REDACTED] and I am [REDACTED] years of age employed as a [REDACTED]. I was sexually abused in a religious institution.

That institution has a significant history of children reporting sexual assaults to senior staff who took no action to stop the offenders and took no action to report the offenders to police or even to advise parents. In fact, those of us who disclosed were silenced and punished for disclosing. Certain senior staff have been found to have been complicit in protecting multiple offenders.

The circumstances surrounding the offending perpetrated against us has been examined as a Case Study by the Royal Commission into Institutional Responses to Child Sexual Abuse, as a result of which formal adverse findings were made against staff, the institution and senior leadership within the church, including senior clergy.

I have direct experience of the consequence when responsible adults in positions of trust fail to report their knowledge of a child suffering serious harm. It leads to further victims being assaulted which could have otherwise been avoided. It leads to those being assaulted not receiving health care or having the abuse stopped when it could have been.

Now I am an adult and as a qualified [REDACTED] I am a mandatory reporter under the *Child Protection Act 1999*. I welcome the obligation under this Act; it is not unduly burdensome and in fact it is simply a natural extension of my existing professional duties as well as my responsibilities as a human and as a caring adult.

Being a mandatory reporter under the Act does not interfere with my daily duties; it does not burden me with unnecessary administration, it does not create a bureaucratic headache nor does it create any legal fears. It provides statutory protections for reporting reasonable concerns.

I welcome the broadening of Mandatory Reporting to all adults, via the Failure to Report offence and I welcome the Failure to Protect offence relating to institutions.

4. Consultation with key stakeholders

This submission is informed by consultation over a number of years with a wide range of stakeholders including:

- Queensland Government departments
- Queensland statutory authorities
- Professional associations (health and education)
- Religious institutions and affiliated bodies (various denominations)
- Child protection organisations
- Survivors of child abuse
- Persons who have made mandatory reports
- Blue Card (Working With Children Check) holders
- The Royal Commission into Institutional Responses to Child Sexual Abuse
- Senior legal professionals

As well as review of a wide range of relevant documents, including:

- Royal Commission Case Study reports and evidence
- The Reports of Church Inquiries and Government Inquiries into child abuse
- Queensland Government departmental policies
- Queensland Legislation – existing and previous including Explanatory Notes
- Legislation of other Commonwealth jurisdictions
- Australian Institute of Criminology papers
- Law Society reports
- Medical, psychological and scientific literature
- Church Canon and policy on the Seal of the Confessional
- Church sex offender re-integration policies
- Church risk management policies
- Church protocols for responding to allegations of child abuse
- Victim impact statements in which the child's disclosures were not reported by adults
- Submissions to Parliamentary Committees

5. Data regarding abuse and failure to report

Failure to report abuse exacerbates the abuse; abuse of current victim/s may likely continue; the offender may likely proceed to abuse further future victims; health treatment is not able to be initiated for victims; and the offender cannot be prosecuted. Harm caused by the abuse continues until the person is old enough to escape and even then there are documented delays to treatment.

If child sexual abuse is not reported it cannot be treated. The Royal Commission found that the cost to the Australian economy of untreated childhood sexual abuse is:

\$6.8 billion annually

This annual cost includes:

- public health care costs
- welfare / unemployment / under-employment costs
- lost productivity (including sick leave)
- intergenerational impact of family dysfunction

In seeking to quantify the scale of child sexual abuse in institutions nationally, the Royal Commission conducted:

7,213	Private Sessions
57	Focused Case Studies into Institutions
11	Issues Papers

The two largest religious institutions in Australia – the Catholic Church and the Anglican Church – submitted data to the Royal Commission based on their internal records of reported child abuse within their own institution. Their self-reported data is considered to likely significantly under-report the true extent of abuse in their institutions.

Evidence for this includes a number of flaws in the institutional self-reported data.

Firstly, the Commonwealth Government's Australian Institute of Criminology *Trends & issues in crime and criminal justice* (consistent with international research) identifies that:

Sexual crimes are the most under-reported of all crimes, in the region of **5 – 10%** of true incidents of assault.

Secondly the data provided by the Churches was restricted to an arbitrary date range: it only ranges from 1980 to 2015. No data relating to child abuse prior to 1980 was included in the statistics. There is widespread evidence of significant abuse of children in orphanages and religious institutions from the 1950s to 1980s including Indigenous children, War Orphans and children sent *en masse* from the United Kingdom as child migrants.

Thirdly, the Catholic Church reported that it only provided data on complaints where the church had performed some action to 'follow up' the complaint. In other words the Church did not even report to the Royal Commission all complaints *received*, only complaints *followed up* by the Church. The Royal Commission has exposed Churches as having a strong culture of not following up reported abuse, therefore this criteria must be considered to significantly artificially reduce the true numbers of abuse. Many complaints were simply ignored by the Church, not followed up, and scandalously allowed to be dropped from the institutional self-reported data.

Fourthly, the Royal Commission has produced research findings that child abuse takes, on average, over 20 years to report – therefore the most recent decade of data must be assumed to contain a quantity of as-yet unreported abuse. It is now 2020. Any data from 2000 to the 2015 will likely be under-reported due to undisclosed abuse.

With these limitations of the data in mind, the Catholic Church reported to the Royal Commission that it was responsible for 4,444 victims of child sexual abuse over three decades. That is a child being criminally sexually assaulted by clergy/church worker every *two to three days* for thirty years. And this is just the under-reported data.

Some church institutions have had as many as 40% of their members identified as directly perpetrating sexual offences against children. Many church institutions had about 20% of their

members officially recognised by the Church as actively perpetrating sexual crimes against children. These are self-reported church figures so the real numbers are likely higher.

Anglican Church self-reported figures have admitted to over 1,000 victims of abuse (noting similar data limitations and so this is an under-reported figure). The majority of these were in Queensland. The Anglican Diocese of Brisbane (now called the Anglican Diocese of Southern Queensland) is responsible for over a third of all child sexual abuse in Anglican Church institutions in Australia – more than all other Dioceses combined. A significant amount of this abuse occurred or was reported during the leadership period of Archbishop Peter Hollingworth. Hollingworth was then appointed to the role of Governor General of Australia only to resign in disgrace as a consequence of his history of mishandling reported child sexual abuse in the Diocese of Brisbane. There is no evidence of Hollingworth ever reporting child abuse to police.

Bishop of Newcastle, Greg Thompson, attributed the scale of abuse and cover-up to the insular culture of the church including resistance to proper external scrutiny:

"I think it's been undermined by tribal interests, vested interests in keeping the jurisdictions, of not allowing someone else coming into our territory to tell us what to do"

Evidence from the former Primate of the Anglican Church, and current Archbishop of Brisbane, Phillip Aspinall was that the structure of the church itself was a barrier to effective child protection reform. In evidence under Oath, he stated that the Anglican Church of Australia needed child protection recommendations to be formally imposed upon the Church by Parliaments because the national structure created obstacles to the Church reforming itself.

The Royal Commission received direct evidence from junior staff of all religious denominations as well as from non-religious organisations who had reported known or suspected acts of child abuse to senior staff members and clergy only to have the matter suppressed at the senior level with no further action taken and no external reporting.

To understand how this has been even possible, and in fact wide-spread, requires a brief review of the risk factors leading to non-reporting that are common to most institutions: religious institutions, government institutions, youth groups, etc.

6. Risk factors leading to non-reporting

While it may seem bizarre that a responsible adult would not report child abuse to police, in fact that is exactly what has happened in religious institutions around the country for decades due to certain common risk factors: systemic risk factors pertaining to the culture of institutions, and individual personality/character risk factors pertaining to leaders and staff.

Systemic factors of an institution have combined with factors within individual persons with the result being that senior leadership staff (clergy and lay) have acted in the perceived financial and reputational interests of the institution without regards to the rights, health and welfare of children who are being harmed. Also junior or disempowered staff who have been otherwise well intentioned have allowed themselves to be intimidated out of externally reporting child abuse.

Systemic barriers to external reporting include:

- strong hierarchical culture within institutions, not allowed to question authority;
- insular nature of religious institutions – ‘we are different from/superior to other people’;
- culture of devotion to a church leader or minister, clergy are superior to laity;
- mistaken belief in infallibility of clergy, mistaken belief that ‘ordination’ alters risk;
- strong cultural emphasis rewarding loyalty to the ‘brand’ above any other attribute;
- mistaken belief that good reputation is preserved by concealing bad truths.

Factors within an individual that may be a barrier to external reporting include:

- leaders who value personal status and reward ahead of institution’s core moral values;
- naivety or impressionability of junior staff/members who don’t think to question;
- lack of empowerment to challenge authority, even when it is right to do so;
- lack of awareness of clearly defined reporting responsibilities;
- fear of lack of clear legal protections when reporting (and therefore possible punishment);
- financial barriers – fear of dismissal or non-advancement of career for reporting;
- denial – not wanting to confront an uncomfortable truth about their church or a colleague;
- self-identity strongly aligned with the institution or to specific personalities;
- the institution may be the person’s entire world: faith, employment and social circles.

Misuse of Christian Forgiveness

An important and note worthy tenet of the Christian faith is God's forgiveness for the genuinely penitent. However this otherwise positive aspect of the faith has been corrupted and bastardised by clergy and senior Church leaders, being twisted into an excuse for concealing child abuse to protect offenders and the public image and assets of the Church. It has resulted in prolonging harm to children and adult survivors of abuse.

The misuse of the Christian tenet of 'forgiveness' has been identified by the Royal Commission as a powerful barrier against external reporting.

In documented cases 'Christian forgiveness' has been misused by clergy and senior leaders to pressure child victims to 'forgive' their abusers, including face to face. This has caused substantial psychological confusion and trauma to the child victim. It contributes to the perception that the abuser is not culpable or responsible for their crimes. When this is coupled with making the child then undertake a 'confession' this practice further reinforces to the child that they were somehow responsible for the sexual assaults perpetrated upon them by an adult.

The 'forgiveness' of offenders for criminal acts has resulted in non-reporting of the abuser's crimes to police, sometimes for many years and with the consequence that the abuser re-offends again and again. There are examples of clergy misusing their authority and exploiting the faith and reverence placed in them by trusting parishioners to induce parents of abused children to 'forgive' the offender and the parents have been manipulated into pressuring the child to 'forgive' the offender, trusting in their Bishop that this is 'the Christian thing to do'. This has had the horrible effect on the abused child of isolating them from their own parents and from the church/their faith. The child has not had the important adults in their life stand up for them and openly convey the message that the offender's conduct was wrong and should not have occurred.

While in some instances this may have been done out of a misinterpretation of Christian forgiveness, in a number of proven instances it was done willfully to protect known offenders and to protect the image of the Church.. In all cases, regardless of motive, it is potentially a criminal offence of the unlawful concealment of an indictable offence (the sexual assault of a child). The practice has been documented by the Royal Commission in all of the major Christian institutions, used as a convenient screen to avoid 'scandal' in the Church.

One documented example on the public record of the misuse of Christian forgiveness is that perpetrated by Peter Hollingworth, former Archbishop of Brisbane. The 2003 Church Inquiry Report, tabled in Queensland Parliament by then Premier Peter Beattie, made adverse findings that Hollingworth retaining a known child abuser in ministry was “untenable” conduct. The documented evidence included correspondence written by Hollingworth to a victim of abuse advising the victim that Christian forgiveness should allow the child abuser to retain his ministry. When one of the abuser’s victims requested, understandably, that Hollingworth not retain the admitted child abuser in a trusted position in ministry, Hollingworth wrote to the victim:

He [the offender] has been brought under the discipline of the church, made his confession ... I am bound to say that at the end of the day the Christian rule is one of forgiveness and reconciliation ... God's last word is one of forgiveness ...

Hollingworth then goes on to admit that he knows that clergy who rape children should be deposed from Holy Orders, writing:

If he ever does this kind of thing again he knows that I will remove his Licence immediately.

“If he ever does this kind of thing again...”? This begs the obvious question – how many children does a clergyman need to rape to trigger deposition from Holy Orders? Surely just the one? Not according to Hollingworth... Hollingworth openly forgives the sexual assault of multiple boys.

In that example Hollingworth was aware the offender had abused multiple children and had received a psychiatrist report that the offender was an ongoing risk. Hollingworth admits to putting the interest of the offender and the Church first and admits knowing his action is wrong:

...your departure at this stage...could make things worse for you and the Church...in not taking disciplinary action I and the church could subsequently be charged with culpability... This action [retaining the offender in ministry] differs from the advice given to me by Dr Slaughter [psychiatrist] who is of the view that your problem is something which keeps recurring and is likely to happen again.

Here we see how Christian ‘forgiveness’ has been misused by senior clergy to extend to ‘protection from any form of consequence’. Forgiving a sinner for his sins does not also mean automatic freedom from all other consequences (reporting to police) or ignoring sensible child protection measures (removing a known child abuser from their trusted position in ministry).

The Hollingworth example occurred right here in Queensland and shows the harm caused by blind adherence to ‘confession’ and the harm caused by misusing Christian forgiveness and confusing God’s forgiveness of a sinner as absolving a person of any Earthly consequence for a crime. God can forgive the child abuser and cleanse their soul as they sit in jail. God’s forgiveness applies to a person’s immortal soul and does not deliver the person from appropriate Earthly consequence nor does it suspend appropriate child protection measures.

Sins can be forgiven. Crimes must be reported. When conduct is both, do both.

Sadly, that documented instance was but one of many. The Inquiry Report also documents that Hollingworth allowed a Bishop to remain in ministry in Queensland despite the Bishop admitting openly in front of Hollingworth to having sexually assaulted a child.

There was a high rate of child abuse being reported to the Brisbane Diocese while Hollingworth was Archbishop. It is documented that in the Brisbane Diocese there were new reports of child sexual abuse, often involving multiple victims, occurring almost every year that Hollingworth was Archbishop and yet there is no evidence of the Archbishop or other senior leaders in the Diocese (clergy or laity) reporting any child abuse to the police while Hollingworth was in charge.

It was not until Hollingworth left the role, that his replacement saw the volume of complaints and the body of evidence and immediately reported the child abuse complaints to police. The Diocese Annual Report 2003 identifies reports of **131 perpetrators** of abuse and immediate withdrawal of some clergy licences for sexual misconduct/failure to obtain Blue Card.

Difference between church leadership and grassroots membership

Evidence before the Royal Commission has consistently borne out a picture of dichotomous institutions, where the ‘grassroots’ membership, who may be first to observe harm to a child, are generally humanly caring and compassionate whereas the senior leadership (clergy or laity) are focused on protection of the church ‘brand’, assets and public image above the needs of children.

This is why the offence of Failure to Protect, the offence of Failure to Report and why Mandatory Reporting are an essential element of child protection. These provide junior staff with a formalised legal obligation to report, beyond and external to obstructionist institutional leadership. The offences provide a clear pathway that it is *external to the institution*, and provide robust legal protection to person’s making reasonable reports. The proposed offences include provisions to protect an employee from being punished for fulfilling their statutory obligation.

It is sad that laws are required to make individuals within institutions do the right thing. Given the stated core moral values of churches, reporting child abuse to police should be something that comes naturally. But history has taught us this is not the case. Laws are required.

Reporting of abuse other than institutional abuse

In addition to abuse of children by staff of institutions, children are abused in non-institutional contexts such as in the family home or by associates of the child’s family. Therefore the people around the child, as trusted non-abusing adults, are in the position of being most likely to receive a disclosure of harm or other disclosure to form a reasonable suspicion of harm. Such people would include: volunteers in the child’s activities (ie Blue Card holders); chaplain at the child’s school; volunteer or employee of a religious institution engaging in child-oriented activities such as after-school care, religious instruction or other pastoral activities; a psychologist or ATSI health care worker working with a child; or non-abusing members of the child’s family or social circle.

All of these people may be subject to the same barriers to reporting as identified in institutional abuse and so require the same clear legal direction of a well-defined reporting pathway and deserve the same legal protections when reporting. This is why applying Failure to Report provisions to all adults, as is already done in other jurisdictions, is appropriate and responsible.

7. Royal Commission *Criminal Justice Report*

On 14 August 2017 the Royal Commission released its report into the matters pertaining to the role of governments, police and prosecution agencies in relation to child sexual abuse, known as the *Criminal Justice Report*. In the Royal Commission's own words:

On 5 September 2016, the Royal Commission published the Consultation paper: *Criminal Justice* (the Consultation Paper). We received a wide range of submissions in response to the Consultation Paper. In November and December 2016, all six Commissioners sat for the public hearing in relation to issues raised in the Consultation Paper.

Responses to the Consultation Paper and the public hearing have helped to inform our final recommendations on criminal justice, which are contained in this report.

As recognised in the Letters Patent, **while we have not specifically examined the issue of child sexual abuse and related matters outside institutional contexts, the recommendations we make in this report are likely to improve the response to all forms of child sexual abuse in all contexts.**

[emphasis added]

From an extensive research and evidence base, including input from religious institutions, the Royal Commission make a number of Findings and Recommendations relevant to:

- Mandatory Reporting
- Criminal Offences (Failure to Report and Failure to Protect)
- Seal of the Confessional (secrecy)

The relevant Findings and the Recommendations will now be briefly summarised for the Committee's convenience.

Formal Findings of the Royal Commission Criminal Justice Report

Mandatory Reporting

On the question of mandatory reporting, the Royal Commission found:

Before discussing a criminal offence, we consider it important to make clear that **persons who know or suspect that a child is being or has been sexually abused** in an institutional context **should report this to police** – not necessarily as a legal obligation enforced by a criminal offence but **because it is moral and ethical to do so**.

Child sexual abuse is a crime and it should be reported to police.

There should be no doubt that **police are the correct agency to which child sexual abuse should be reported**.

[emphasis added]

This puts to rest the long-held views of religious institutions and even some private secular institutions and government institutions that they are in any way equipped to self-investigate criminal offences against children. They are not so equipped. Criminal investigation is for police.

Criminal Offences

On the question of criminal offences for non-reporting of crimes, the Royal Commission found:

Turning to the issue of a criminal offence, we are satisfied that **there are good reasons for the criminal law to impose obligations on third parties to report to police in relation to child sexual abuse.**

These reasons recognise the **great harm that child sexual abuse can cause** to victims... These reasons also recognise that, unlike other categories of crime, **child sexual abuse is often not reported and stopped at the time of the abuse** because the child victims face such difficulties in disclosing or reporting the abuse. **When a perpetrator is not discovered and stopped** from abusing a child, **they may continue to abuse that child and other children.**

...we consider that the offence should apply if a relevant person [at the institution]:

- knows or suspects that a child is being or has been sexually abused; or
- *should have suspected* that a child is being or has been sexually abused (on the basis that a reasonable person in their circumstances would have suspected),

by a person associated with the institution.

The standard of '*should have suspected*' requires a person to report where a reasonable person in the same circumstances as the person would have suspected.

It allows for consideration of what the person knew – both inculpatory and exculpatory – and asks whether, with that knowledge and in those circumstances, a reasonable person would have suspected.

...

[this test is] in line with the standard of criminal negligence.

[emphasis added]

The Royal Commission reinforce as their reasoning, the complicit culpability of members including senior members of institutions in concealing criminal sexual offences against children in order to protect themselves, their colleagues and the 'image' or assets of the institution:

...we are satisfied that **this is a necessary step to take**, particularly in light of the evidence we have heard from a number of senior representatives of institutions effectively denying that they had any knowledge or had formed any belief or suspicion of abuse being committed in circumstances where their denials are very difficult to accept.

We consider that **creating an offence of failing to report where the person *should have suspected abuse*** will also assist to overcome any conflict between the institutional representative's duty to report and their interest in seeking to protect the reputation of the institution.

[emphasis added]

Seal of Confessional (secrecy)

With respect to the seal of the confessional the Royal Commission has found that no practice of ‘confidentiality’ is to have any recognition in secular law; that there is to be no protection at law for any member of an institution concealing the criminal sexual assault of children on any basis, including claimed religious tradition, doctrine or ritual, and that the proposed criminal offences for non-reporting are to expressly state that non-reporting in the context of any practice of ‘confession’ is not exempt. This applies to any denomination engaging in the practice.

The following are the Royal Commission’s formal findings regarding the Doctrine of the Seal of the Confessional:

We have considered whether clergy should be exempt from reporting information about child sexual abuse received through religious confession.

A ‘religious confession’ is a confession that a person makes to a member of the clergy in the member’s professional capacity according to the ritual of the church or religious denomination involved.

We are satisfied that, where the elements of the reporting obligation are met, **there should be no exemption**, excuse, protection or privilege from the offence granted **to clergy for failing to report information disclosed in or in connection with a religious confession.**

We understand the significance of religious confession – in particular, the inviolability of the confessional seal to people of some faiths, particularly the Catholic faith. However, **we heard evidence of a number of instances where disclosures of child sexual abuse were made in religious confession**, by both victims and perpetrators. We are satisfied that **confession is a forum where Catholic children have disclosed their sexual abuse and where clergy have disclosed their abusive behaviour in order to deal with their own guilt.**

We also heard evidence that the practice of religious confession is declining, at

least in the Catholic Church. However, it remains possible that information about child sexual abuse held by people associated with a relevant institution is communicated to a priest hearing a religious confession.

Submissions to the Royal Commission argued that any intrusion by the civil law on the practice of religious confession would undermine the principle of freedom of religion. In a civil society, it is fundamentally important that the right of a person to freely practise their religion in accordance with their beliefs is upheld.

However, that right is not absolute. This is recognised in article 18 of the *International Covenant on Civil and Political Rights* on the freedom of religion, which provides that the **freedom to manifest one's religion or beliefs may be the subject of such limitations as are prescribed by law and are necessary to protect public safety**, order, health, or morals or the fundamental rights and freedoms of others.

The right to practise one's religious beliefs must accommodate civil society's obligation to provide for the safety of all and, in particular, children's safety from sexual abuse. Institutions directed to caring for and providing services for children, including religious institutions, must provide an environment where children are safe from sexual abuse. Reporting information relevant to child sexual abuse to the police is critical to ensuring the safety of children.

Our inquiry has demonstrated that there is significant risk that perpetrators may continue with their offending if they are not reported to police. Reporting child sexual abuse to police can lead to the prevention of further abuse. **In relation to religious confessions, we heard evidence that perpetrators who confessed to sexually abusing children went on to reoffend and seek forgiveness again.**

We heard other arguments for why there should be an exemption or privilege for religious confessions, including that:

- religious confessions privilege should operate in the same manner as legal professional privilege

- there would be little utility in imposing a reporting requirement, as religious confession is infrequently attended and the practice of confession is such that information given about child sexual offences would not be of use to the police
- perpetrators of child sexual abuse are unlikely to attend confession anyway; however, in the face of a reporting requirement, perpetrators would cease attending confession and would be unable to access a source of guidance and contrition
- priests would be unlikely to adhere to a reporting requirement and there may be subsequent damage to the reputation of the legal system
- a reporting requirement is inconsistent with the privilege contained in the Uniform Evidence Act.

[In Chapter 16] we address each of these arguments, concluding that there should be **no exemption or privilege** from the failure to report offence **for clergy who receive information during religious confession that an adult associated with the institution is sexually abusing or had sexually abused a child.**

[emphasis added]

While this wording refers to confessions made by or about offenders within the institution, noting the Royal Commission's restriction to examine institutional offending by the Letters Patent, the Royal Commission further notes in its Executive Summary that its findings can be taken by Parliaments and governments to be applied to all forms of child abuse, not only sexual, and also other contexts, including outside of institutions (ie in the community more broadly and in families). The Failure to Report offence proposed by the bill is in relation to sexual abuse only and applies to all adults, not only persons associated with an institution. The Failure to Protect offence is in relation to sexual abuse only and is specifically constrained to abuse occurring within institutional contexts.

Recommendations of the Royal Commission Criminal Justice Report

Following from the above Findings, the Royal Commission recommends to criminalise non-reporting of child abuse. These are found at Recommendations 32, 33, 34 and 35.

Recommendation 32

Recommendation 32 is a general encouragement that reinforces that the Royal Commission identifies that police are the appropriate agency to whom to report abuse and that the Royal Commission expects this of all persons associated with an institution, not only those in ministry:

Recommendation 32

Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police (and, if relevant, in accordance with any guidelines the institution adopts in relation to blind reporting under recommendation 16).

Recall that, while the Recommendation is restricted to persons associated with an institution, the Royal Commission identify that they are limited to examining child sexual abuse in institutional contexts by the Letters Patent but that their findings can and should be taken by Governments to apply to all forms of child abuse and in non-institutional contexts. The bill appropriately proposes a Failure to Report offence that applies to all adults and is not limited to persons associated with an institution.

Recommendation 33

Recommendation 33 recommends criminalising non-reporting. The Royal Commission's recommendation for a criminal offence is directed at institutional contexts and applies to all members of an organisation including volunteers. It states, *inter alia*:

Recommendation 33

Each state and territory government should introduce legislation to create a criminal offence of failure to report targeted at child sexual abuse in an institutional context as follows:

- a. The failure to report offence should apply to **any adult person** who:
 - i. is an owner, manager, staff member or **volunteer** of a relevant institution – this includes persons in religious ministry and other officers or personnel of religious institutions
 - ii. **otherwise requires a Working with Children Check** clearance for the purposes of their role in the institution

but it should not apply to individual foster carers or kinship carers.

- b. The failure to report offence should apply if the person fails to report to police in circumstances where they **know, suspect, or should have suspected** (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect), that an adult associated with the institution was sexually abusing or had sexually abused a child. Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster and kinship care services should be included (but not individual foster carers or kinship carers). Facilities and services provided by religious institutions, and any services or functions performed by persons in religious ministry, should be included.

[emphasis added]

Recommendation 34

Recommendation 34 provides that the appropriate Mandatory Reporting body is the police. This is by comparison to such reporting mechanisms such as the requirement to report to the Department of Communities, Child Safety and Disability Services currently under the *Child Protection Act 1999* or *Education (General Provisions) Act 2006* and elsewhere.

Recommendation 34

State and territory governments should:

- a. ensure that they have systems in place in relation to their mandatory reporting scheme and any reportable conduct scheme to ensure that any reports made under those schemes that may involve child sexual abuse offences **are brought to the attention of police**
- b. include appropriate defences in the failure to report offence to avoid duplication of reporting under mandatory reporting and any reportable conduct schemes.

[emphasis added]

Recommendation 35

Recommendation 35 directly addresses the issue of the Seal of the Confessional:

Recommendation 35

Each state and territory government should ensure that the legislation it introduces to create the criminal offence of failure to report recommended in recommendation 33 addresses religious confessions as follows:

- a. The criminal offence of failure to report should apply in relation to knowledge gained or suspicions that are or should have been formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.
- b. The legislation should exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective.
- c. Religious confession should be defined to include a confession about the conduct of a person associated with the institution made by a person to a second person who is in religious ministry in that second person's professional capacity according to the ritual of the church or religious denomination concerned.

This clearly resolves once and for all, that any secrecy associated with the Seal of the Confessional is to have no legal weight in a modern society which values the safety of children.

This recommendation does not in any way restrict members of religious organisations from holding their spiritual *beliefs* – it merely means that certain *practices* which pose a risk of harm must comply with modern secular law and community standards. It is ultimately to the benefit and long term survival of a religious institution for that institution to be a child-safe environment. Institutions should be enthusiastic, not reluctant, to be child-safe. Being child-safe is the ultimate protection against litigation and against the wide spread disillusionment with and exodus from the church that is currently occurring as a result of so many dire failures of leadership.

8. Royal Commission *Final Report* (Mandatory Reporting recommendations)

In addition to the *Criminal Justice Report*, the Royal Commission makes a number of Recommendations about amendments to Mandatory Reporting frameworks in their *Final Report* published June 2018.

The Government bill, while otherwise commendable, makes no effort to amend the *Child Protection Act 1999*, the *Education (General Provisions) Act 2006* or other relevant Acts to add categories of Mandatory Reporter in accordance with Royal Commission recommendations.

As previously stated, the Royal Commission *Criminal Justice Report* generally recommends:

Recommendation 32:

Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police

In other words, *any person* associated with an institution (not simply persons in ministry) should be a Mandatory Reporter (to police, not simply to child protection authorities).

Additionally, the *Final Report* of the Royal Commission specifically recommends:

Recommendation 7.3

State and territory governments should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, state and territory governments should also include the following groups of individuals as mandatory reporters in every jurisdiction:

- a. out-of-home care workers (excluding foster and kinship/relative carers)
- b. youth justice workers
- c. early childhood workers
- d. registered psychologists and school counsellors
- e. people in religious ministry

Recommendation 7.4

Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.

In Queensland, persons who are Mandatory Reporters are described at section 13E of the *Child Protection Act 1999* which currently states:

13E Mandatory reporting by persons engaged in particular work

(1) This section applies to a person (a *relevant person*) who is any of the following—

- (a) a doctor;
- (b) a registered nurse;
- (c) a teacher;
- (d) a police officer who, under a direction given by the commissioner of the police service under the *Police Service Administration Act 1990*, is responsible for reporting under this section;
- (e) a person engaged to perform a child advocate function under the *Public Guardian Act 2014*;
- (f) an early childhood education and care professional.

The additional groups as recommended by the Royal Commission (including clergy) should be included in the list of Mandatory Reporters under the *Child Protection Act 1999* with associated relevant provisions as required in the *Education (General Provisions) Act 2006* and elsewhere.

The Queensland Government have previously attempted to partially address this.

On 21 March 2017 the Attorney-General introduced the Child Protection and Education Legislation (Reporting of Abuse) Amendment Bill 2017.

That Government bill proposed:

Amendment of s13E (Mandatory reporting by persons engaged in particular work)

Section 13E(1)—

insert—

- (g) a minister of a religious denomination or society who performs work for, or has an association with, a school.

Examples of a minister for paragraph (g)—

priest, pastor, bishop, rabbi, imam

As well, the bill sought to amend sections 364, 365, 365A, 366 and 366A of the *Education (General Provisions) Act 2006* to impose mandatory reporting requirements upon a “religious representative” defined as “a minister of a religious denomination or society”.

However, that bill went nowhere as Parliament was dissolved on 29 October 2017 for the state election and the Government Bill lapsed.

This was not such a bad thing because there were fundamental flaws with that bill’s proposed wording of ‘(g)’; namely that the category of Mandatory Reporter was far too narrowly described. It only described a *minister* of religion *with an association with a school*. That would predictably not have obligated any minister of religion with *no* association with a school (and therefore was in breach of the Royal Commission Recommendations). Only describing a *minister* would not obligate staff such as a school chaplain who was not also a ‘minister’ of religion (most, if not all, school chaplains are laity and are *not* ministers). The bill also failed to include the other recommended professions. So it is probably not a bad thing that particular bill lapsed, allowing for a fresh opportunity to now properly apply the Royal Commission recommendations.

While the specific wording of that bill was questionable, it confirms a precedent that this Government is on the record as acknowledging that expanding the list of Mandatory Reporters is the right course of action and they have already attempted it. They should therefore do so now.

The Queensland Government also confirmed their willingness to expand the list of Mandatory Reporters having previously introduced “(f) an early childhood education and care professional” with the passage of the *Child Protection (Mandatory Reporting—Mason's Law) Amendment Act 2016*. So, again, and to their credit, this Premier and Attorney General are well and truly on the record as supporting expansion of the list of Mandatory Reporters. It would have been a very simple matter then to have included the Royal Commission’s recommended additions in this bill.

It can be argued that the new Failure to Report criminal offence applying to all adults supersedes the need for expansion of the list of Mandatory Reporters under the *Child Protection Act 1999* or the *Education (General Provisions) Act 2006* however ideally the Government would adopt a purposeful approach – for example either the Mandatory Reporter list be expanded to include all relevant persons, or if the Mandatory Reporting provisions are now deemed to be redundant (due to the Failure to Report offence) the Mandatory Reporter list should be removed entirely from the statute, rather than having an incomplete ‘legacy’ list lingering on the books.

It can also be argued that the Mandatory Reporting framework is not made redundant by the Failure to Report offence, as Mandatory Reporting performs other functions not performed by the criminal offences of Failure to Report. The Failure to Report offence does not completely replace a Mandatory Reporting or Reportable Conduct framework, but works in complement.

In Queensland there is no defined statutory penalty for a Mandatory Reporter not fulfilling their obligations (an oversight which supports the need for a Failure to Report offence). However, it does provide for a pathway for administrative or disciplinary action or for action in relation to professional registration where applicable. It provides a disciplinary pathway with a lower standard of proof than the criminal standard applying to the proposed Failure to Report offence. Therefore, it may be inferred that the Mandatory Reporting framework might still have a role in child protection by providing an alternative to criminal prosecution for cases that warrant some form of administrative or disciplinary response but fall below the criminal threshold.

The Committee is asked to recommend that the Government, if it has not done so already, issue a public statement confirming its intention with regards the Royal Commission recommendations for Mandatory Reporting and that the Government please declare it’s position on the relevance and future of the Mandatory Reporting framework given the introduction of the criminal offence of Failure to Report.

If this Government intends to retain the Mandatory Reporting framework then the list of Mandatory Reporters should as a minimum be updated to include:

- People in religious ministry
- Psychologists
- School counsellors
- Youth justice workers
- Out-of-home care workers
- School ‘chaplains’
- All persons associated with an institution

School chaplains

It should be noted that school chaplains dangerously fall between the cracks of Mandatory Reporting, as they are usually not qualified or registered teachers, are not qualified or registered psychologists, may or may not be qualified or registered school counsellors, and are not clergy or ministers of religion (Queensland currently only includes one of those categories on its list of Mandatory Reporters, whereas the Royal Commission recommends they all be included).

However, by the nature of the role – chaplaincy or unqualified ‘counselling’ – school chaplains are choosing to place themselves in a position of authority and trust *vis a vis* children in schools and it is reasonably foreseeable that a school chaplain will be exposed to information that would reasonably form a suspicion of abuse, whether perpetrated by a colleague, or member of the child’s family or other person. The school chaplain should be subject to the same Mandatory Reporting requirements as other professional staff in the school, and should benefit from the same legal protections that accompany the making of a good faith mandatory report. There is no logical basis for school chaplains to not be Mandatory Reporters.

School chaplains are, as per the requirements of the national School Chaplain Program, associated with a religious institution. The Royal Commission clearly recommends (such as at 32) that “any persons associated with an institution” should be required to report to police.

9. Legislation in other jurisdictions

All jurisdictions have committed to the reforms

The Council of Attorneys-General have committed to implementing Failure to Report and Failure to Protect legislation in all jurisdictions. Therefore, the proposed Queensland legislation is consistent with a national approach. The Royal Commission identified that it was important that there be nationally consistent legislation across all jurisdictions.

In her introductory speech to the bill, the Attorney General cites examples of Failure to Report legislation which apply to all persons over 18 (ie not only persons associated with an institution) having been passed in jurisdictions including:

- New South Wales
- Victoria
- Tasmania
- Australian Capital Territory

The Victorian legislation pre-dates the Royal Commission and so offers many years of example of the legislation safely in effect. Pre-dating even this is the longstanding approach to Mandatory Reporting in the Northern Territory via the *Care and Protection of Children Act 2007* and as amended in 2009.

Those longstanding examples will now be examined briefly for the Committee's convenience.

Victoria

Victorian Mandatory Reporting legislation has some similarity to Queensland's in that prescribed 'mandated reporters' (as is the term used in the Victorian legislation) are a select group of clearly defined professionals: doctors, nurses, teachers, police.

It is slightly broader than Queensland in that all police officers in Victoria are 'mandated reporters', whereas in Queensland only police officers working in defined Child Protection Officer roles are mandatory reporters. Bizarrely, in Queensland therefore technically an ordinary police officer is not a mandatory reporter under the *Child Protection Act 1999*.

Victoria's Failure to Report laws arose from the *Report of the Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations* which preceded and was independent of the national Royal Commission and includes criminalising the non-reporting of child sexual abuse by **any adult** in Victoria.

Victoria passed the *Crimes Amendment (Protection of Children) Act 2014* having effect from 27 October 2014 that makes it a criminal offence for **any adult** to fail to report child sexual abuse to the police, with the burden of proof for a defence resting with that adult. The offence only relates to sexual assault, not physical assault or neglect.

The offence requires that any adult who holds a **reasonable belief** that a sexual offence has been committed in Victoria by an adult against a child (aged under 16) disclose that information to police. The offence applies to **all adults** in Victoria, not just professionals who work with children. Defence of a 'reasonable excuse' exists. Note that the offence is based on a 'reasonable belief' and is not restricted to directly disclosed or witnessed abuse.

On 1 July 2015 Victorian legislation came into effect making it an offence to fail to protect for any person within an institution or organisation who is proven to have knowledge of child sexual abuse, had the authority to act to cease or reduce the risk of harm, but negligently fails to do so.

So those laws have been in effect in that jurisdiction for four to five years now offering an example for Queensland legislators.

Northern Territory

Similarly with Victoria, the Northern Territory requires all adults to report reasonable suspicions of child harm and creates offences for non-reporting.

Also predating the Royal Commission, the *Care and Protection of Children Act 2007* makes it an offence for *any adult* to fail to report reasonable suspicions of child sexual abuse. From 2009 this was expanded to include *all forms of harm to a child* and reference to health worker in the Act specifically expanded to cover all forms of health worker (not just doctors or nurses).

Section 26 of the *Care and Protection of Children Act 2007*, (NT) makes reporting mandatory for all adults in relation to harm or exploitation and sexual offence against child **under 14**:

Section 26 Reporting obligations

(1) A person is guilty of an offence if the person:

(a) believes, on reasonable grounds, any of the following:

- (i) a child has suffered or is likely to suffer harm or exploitation; or
- (ii) a child aged less than 14 years has been or is likely to be a victim of a sexual offence;
- (iii) a child has been or is likely to be a victim of an offence of an against section 128 of the Criminal Code; and

(b) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer

- (i) that belief; and
- (ii) any knowledge of the person forming the grounds for that belief; and
- (iii) any factual circumstances on which that knowledge is based.

Section 26 then describes reporting requirements for registered health professionals in relation to suspected sexual offending against persons aged **between 14 - 16**:

- (2) A person is guilty of an offence if the person:
- (a) is a health practitioner or someone who performs work of a kind that is prescribed by regulation; and
 - (b) believes, on reasonable grounds:
 - (i) that a child aged at least 14 years (but less than 16 years) has been or is likely to be a victim of a sexual offence; and
 - (ii) that the difference in age between the child and alleged sexual offender is more than 2 years; and
 - (c) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer:
 - (i) that belief; and
 - (ii) any knowledge of the person forming the grounds for that belief; and
 - (iii) any factual circumstances on which that knowledge is based.

Section 15 of that Act defines *harm* to a child as:

- (1) Harm to a child is any significant detrimental effect caused by any act, omission or circumstance on:
- (i) the physical, psychological or emotional wellbeing of the child; or
 - (ii) the physical, psychological or emotional development of the child;
- (2) Without limiting subsection (1), harm can be caused by the following:
- (i) physical, psychological or emotional abuse or neglect of the child;
 - (ii) sexual abuse or other exploitation of the child;
 - (iii) exposure of the child to physical violence.

The Act defines *health practitioner*, ie for the purpose of s26(2), as a person registered under the Health Practitioner National Law. Essentially this includes (being similar but not identical to the list of AHPRA registered practitioners):

- aboriginal health workers;
- chiropractors;
- dentists;
- dental hygienists;
- dental prosthetists;
- dental specialists;
- dental therapists;
- medical practitioners;
- midwives;
- registered nurses authorised to practice midwifery;
- registered and enrolled nurses;
- occupation therapists;
- optometrists;
- osteopaths;
- pharmacists;
- physiotherapists;
- psychologists; and
- radiographers.

This is a much more comprehensive list of Mandatory Reporters than Queensland's "doctor" and "registered nurse" under s13E of the *Child Protection Act 1999*.

Based on the existing legislation in other jurisdictions, including pre-Royal Commission legislation in the Northern Territory and Victoria and post-Royal Commission legislation in South Australia, Tasmania and the Australian Capital Territory, the offence of Failure to Report proposed by this bill is uncontroversial and is consistent within the national landscape.

10. Seal of the Confessional

This submission respects religious beliefs. This section will address the following common myths that have been circulated by Catholic leadership in relation to the history and function of the Seal of the Confession, its role within the Catholic faith and its impact on child safety.

Addressing the myths

- Myth 1 Mandatory Reporting is an attack on religious freedom
- Myth 2 Seal of Confession doctrine cannot be amended
- Myth 3 Seal of Confession is incompatible with Mandatory Reporting
- Myth 4 Confessional secrecy is an explicit Biblical directive
- Myth 5 Offenders don't confess child abuse in the confessional
- Myth 6 Mandatory Reporting will remove opportunity to 'counsel'

Other relevant considerations

- Papal Decree allows clergy to comply with Mandatory Reporting law
- Mandatory Reporting does not apply to all confessions, only child abuse
- The organisation responsible for most abuse cannot reasonably be exempted
- Non-compliance with law could breach ACNC status
- Possible criminal consequences for inciting non-compliance
- Anglican Church have already modified their confession doctrine
- Prevalence of offending & challenges with detection or prosecution

Addressing the Myths

Myth 1: 'Mandatory Reporting is an attack on religious freedom'

Freedom of religion in Australia relates to freedom to *hold a belief*, not an absolute freedom to engage in any particular religious or cultural *practice* or ritual – particularly where that practice is significantly contrary to prevailing community standards, usually in relation to safety of a person, particularly a child. A practice that causes harm is not protected by religious freedoms.

There are already many areas of law which restrict so-called 'religious freedoms' which are deemed to harm children. Many have been uncontroversial and all are widely supported:

- Female genital mutilation - this is a religious and cultural practice now criminalised because in Australia we value the rights of the child above a harmful religious practice.
- Child marriage – in some African and Islamic religions and culture this is acceptable. In Australia we outlaw it without debate or controversy as we value child protection over harmful religious practice. There are border screening measures in place to seek to identify at-risk children travelling out of Australia. The Catholic Church have not raised any objections to these laws or policing measures as encroaching on 'religious freedoms'.
- Certain aspects of Sharia Law – the rights and safety of women in Australia are valued and protected by secular law, overriding certain religious practices (and even some religious beliefs) in areas such as marriage, divorce, property rights and other liberties.
- Blood transfusions for Jehovah's Witness children – section 20 of the *Transplantation and Anatomy Act 1979 (Qld)* provides that medical professionals in Queensland are permitted by law to administer blood transfusions to a child under 18 for the purpose of life preserving treatment despite parental objections on the basis of religious belief, such as in the case of Jehovah's Witnesses. Doctors do not require a court order. In this case the law is overriding a practice of omission, or a religious belief. Why? Because society values the rights and safety of the child as superior to a religious belief or practice. The Catholic Church raised no objection to this.

So, there are already many precedents of Parliament setting aside a religious *practice* that places children at risk. These have been widely supported and have been without major controversy.

There is a material difference between a belief and a practice, in the same way that there is a difference between a thought and an action. Thoughts are not illegal but certain actions may be illegal. Even in prosecutions for attempted crimes there must be an overt action towards the commission of the offence, not simply a thought to commit the offence.

Religious practices are usually unpinned by a foundational religious belief. But this should not lead to conflation of the belief with the practice. The belief leads to the practice but the belief exists separately from the practice. The practice can be ceased and the belief can continue.

Where the practice causes harm to another person it transgresses from a simple thought to an overt action. It is at that point that restrictions on harmful practices are appropriate. Practices are able to be (and have been) lawfully restricted without in any way altering a person's right or capacity to continue to hold a belief.

The Catholic ritual of confession is a practice, not a belief. It has its origins in certain religious beliefs. As this document identifies the practice was formalised at a council of clergy in the 13th Century based on certain beliefs (not from any explicit foundational Biblical directive).

So, placing a restriction on the secrecy of confession in cases of child abuse (or more exactly, simply *not providing an exemption* for the practice of confession from mandatory reporting obligations) is not a precedent or novel situation for the Parliament. The Parliament has already restricted religious practices on many occasions and with wide community support.

This is not adequately clear in media reporting or commentary on this issue. Archbishops have disingenuously cited 'religious freedoms' and no journalist has yet challenged them on the above existing and widely accepted restrictions already in effect and endorsed by the wider community.

Government (and the Committee) would be wise to make it clear in public statements that the community has long placed child safety above certain religious practices and this bill is by no means the first time this issue has been decided with wide community support.

Myth 2: Seal of Confession doctrine cannot be amended

The Doctrine of Confession is not inflexible. It is able to be amended to better reflect God's purpose and has already undergone various permutations (including multiple translations).

In a 2017 written statement to a Queensland Parliamentary Committee, Archbishop Mark Coleridge, Catholic Archbishop of Brisbane and now President of the Australian Council of Bishops disclosed that the doctrine of confession has *already been modified* by the church on at least one previous occasion. He also confirmed that the current version in use in Australia dates from as recently as **1983**.

This proves the obvious – it is a rule made up by humans and therefore can be changed and the practice has been changed when the Church found it convenient to do so.

Archbishop Coleridge states:

*The first rite of the sacrament involves individual confession of the relevant sins by an individual penitent to a particular priest. This requires full, individual confession of sins by the penitent and individual absolution administered by the priest. The second rite involves several persons who prepare for the sacrament together, but who then individually confess the relevant sins to a particular priest and receive individual absolution by the priest. **There is a third rite which is not in use and is therefore not relevant for present purposes.***

[emphasis added]

In other words the Catholic Church decided to modify the ritual of the confession by ceasing to perform an entire rite as it had become outdated or no longer relevant or practical. The same can now be applied to secrecy that harms children.

In 2020 maintaining secrecy about the sexual abuse of children is not appropriate and so the doctrine can be similarly modified. The result will be priests acting in a manner to better care for and protect God's children (rather than harming children for reasons of some misinterpreted procedural technicality). The Anglican Church have *already done this* – they have amended their doctrine of confession to make it clear that secrecy does not apply to disclosed child abuse.

Myth 3: Seal of Confession is incompatible with mandatory reporting

Best practice, to remove any doubt, would be for amendment of the Catholic Doctrine of Confession (similar to the Anglican amendment) or the issuance of a clarifying directive from senior clergy as to the correct interpretation and application of the Doctrine of Confession.

However, the fact is that even without a formal amendment, the current wording of the Catholic doctrine of the seal of confessional in Australia allows for Mandatory Reporting / Failure to Report legislation, if it is interpreted properly and if Catholic leadership are so motivated.

This evidence has been put to the Parliament since 2017.

Let us examine the Doctrine of Confession used in Australia. Archbishop Mark Coleridge, Catholic Archbishop of Brisbane and now President of the Australian Council of Bishops stated, on 12 June 2017 in his written statement to a Queensland Parliamentary Committee examining Mandatory Reporting:

*“The nature of the sacrament of penance is described in **canon 959 of the Code of Canon Law 1983** in the following terms:*

*In the sacrament of penance, the Faithful **who confess their sins** to a lawful minister, are sorry for those sins and **have a purpose of amendment**, received from God, through the absolution given by that minister, forgiveness of sins they have committed after baptism, and at the same time they are reconciled with the Church, which by sinning they wounded.”*

[emphasis added]

Similarly, in June 2018 Catholic Archbishop of Adelaide Greg O’Kelly stated publicly that:

“Part of confession is a purpose of amendment, that the penitent actually is sincere about wanting forgiveness, is sincere about wanting reparation...

[emphasis added]

Under the existing doctrine/canons, a priest must not disclose the contents of a valid ‘confession’ (canons 983 and 984) upon fear of excommunication (canon 1388). But a priest is free to disclose the contents of any *information exchange* that is not a valid ‘confession’.

By definition, the seal of the confession (the secrecy) only applies where a *valid* ‘confession’ has taken place. If a valid ‘confession’ has not occurred, there is no secrecy. Under the doctrine, as described by those Catholic Archbishops above, a valid ‘confession’ has only taken place when a person has properly confessed – confessing under the existing doctrine requires a true ‘**purpose of amendment**’.

‘**Amendment**’ under the existing doctrine can easily be interpreted, if Catholic leadership have the motivation to do so, to include or require the perpetrator admitting the fact of their crimes to police and to the victim – to make **amends**, for the **purpose of amendment**.

A perpetrator who refuses to admit his crimes to police clearly has no true ‘**purpose of amendment**’ – they have not amended the harm to the victim who continues to suffer by the perpetrator’s ongoing denial to police of those facts which the perpetrator has divulged to be true to a minister of religion. Such deception and continued willful harm is also a failure to amend with God and the Church. The person is not a ‘penitent’, they have no ‘purpose of amendment’ and therefore no ‘confession’ has actually occurred and therefore no ‘secrecy’ applies.

By their actions or omissions the perpetrator has not participated in a valid ‘confession’. An ‘exchange of information’ has occurred, but no true confession has actually occurred under the sacrament and *no secrecy applies*. The minister of religion is not bound by any secrecy restrictions and the minister does not violate any clerical vows or sacrament by reporting information to police. The Church organisation could therefore not properly impose any employment or personal sanction against that minister (such as excommunication).

This interpretation is available to Catholic leadership. The Committee might well ask, why would the Church not be enthusiastic about embracing this interpretation of the existing doctrine? It solves all problems for all stakeholders. The community may well ask why a church organisation (or rather its current senior leadership) so strongly values concealing the active harm of children that it threatens to excommunicate priests who protect children?

Ironically, in doing this, Catholic leadership parallel the Biblical Pharisees, imposing rigid doctrine that acts in opposition to God's will. Any priest who is excommunicated by the Church for protecting children (ie doing God's work) is the modern generation's Martyr and history will likely celebrate them as such while condemning the leadership who Martyred the priest. Instead of vowing to break child protection laws, priests should be lining up to report abuse, protect children and be Martyred by the Church.

Surely there can be no greater Christian honour and service to God than being unjustly excommunicated for breaking an inappropriate doctrine by doing God's work?

Helpfully, none of this should be necessary if Catholic leadership embrace the appropriate interpretation of the existing doctrine (or better still amend it to remove any doubt) which will then protect clergy from employment and faith sanctions such as excommunication.

The powerful aspect of this interpretation / application of existing Catholic Church doctrine, is that Church doctrine, Mandatory Reporting law and priest behaviour all become consistent with one another and there need be no moral or spiritual conflict for the priest between complying with the law versus complying with one's religious teaching – they will be one and the same.

Under this interpretation / application of the existing doctrine:

- The doctrine does not necessarily need to be changed to comply with the law (although amendment is encouraged, in the interest of doctrinal clarity)
- There need be no talk of exempting religious ministers from mandatory reporting
- Priests do not need to choose between, on the one hand, complying with child protection laws and protecting children by reporting crimes, versus, on the other hand, breaking the law and harming children by keeping something secret based on an incorrect interpretation of doctrine

So from now on the correct behaviour would look something like this:

- Child abuser enters confessional and discloses crimes against children to priest
- Priest advises that in order to receive absolution the person must make ‘amends’ including *immediately* report the facts of their crimes to the police (and/or victim’s parents)
- Option A: offender says okay, priest accompanies offender to police, to spiritually support the offender through the prosecution and conviction and to minister to his/her soul throughout that process. Absolution can be granted *after* amends have been made (offender tells truth to police, victim’s family, etc).
- Option B: offender refuses to report immediately to police, the minister advises that in that case the offender is not truly making amends and therefore no valid confession has occurred and therefore the minister is bound to report the matter to police, and does so.

In effect the information exchange occurring in Option B is no different to having occurred in any other capacity of the minister’s duty or life, outside a confession context. This should have always been the correct interpretation and application of the Doctrine of Confession. Instead the culture of offender protection at senior levels and the conflation of *sins* and *crimes* has allowed a corrupted interpretation and application of the doctrine to predominate.

There is precedent already written into the Catholic doctrine of confession for the validity of the confessional being conditional upon the confessing person first taking restorative action which might likely be expected to include public disclosure.

Canon 982 states, in relation to confession of making a false accusation of adultery, that the person is not to be absolved *until they have formally withdrawn the accusation “and is prepared to make good whatever harm may have been done”*. In the case of a public accusation making good the harm obviously includes public retraction and public admission of falsehood.

So already in this and other instances the Catholic doctrine makes confession conditional upon the ‘penitent’ undertaking actions to redress their wrong-doing including public disclosure. If it

is good enough for the Catholic Church to make confession conditional upon a person taking the necessary restorative action, in the case of a person who has made a ‘false complaint of adultery’, then it should be good enough to also require a person who has sexually assaulted a child to also be required to take the necessary restorative action – ie report themselves immediately to police.

Obviously, simple withholding of absolution is a step not as far as Mandatory Reporting, however it shows the precedent within the Doctrine of Confessional for making the validity of the confession dependent on having a genuine purpose of amendment and depending on the taking of a restorative action including public reporting to relevant authorities.

In fact it is able to be argued that in circumstances such as withholding absolution on the basis of having formed an opinion that a person (such as a child) is being actively harmed, but not then taking measures to protect the person being harmed, for reasons of doctrinal interpretation, is itself a sin by the priest against God and against the body of the Church as it is causing and allowing harm to that child and is harming the community of the church and preventing people (the harmed) from being brought closer to God. Secrecy in such circumstances is therefore contrary to God’s purpose.

Therefore the current practice of the Catholic Church of withholding absolution on the basis that a valid confession has not yet occurred merely needs to be extended ever so slightly to allowing the priest to report to police crimes and harm to children on the same basis that a valid confession has not yet occurred.

The Anglican Church has already done this – they have ruled at their National Synod that the confidentiality of the confessional does not apply to reported child abuse. In January 2014 the Doctrine Commission of the Anglican Church of Australia produced their *Report to the Standing Committee on Confidentiality and Confessions* which was updated and reinforced in 2017 (see the relevant section in this Submission for more details).

Making this easier for the Catholic Church in Australia, Pope Francis issued a Papal Decree in May 2019 instructing that all clergy are permitted to comply with Mandatory Reporting laws in their jurisdictions. By definition that includes mandatory reporting laws that do not exempt information disclosed in a confessional and therefore permits clergy to report child abuse disclosed in a confessional (including a valid confession).

Myth 4: Confessional secrecy is an explicit Biblical directive

The Bible does not direct that confessions be secret (or even that confessions require a priest). ‘Secrecy’ as a central component of the doctrine of confession was first codified in canon law in the 13th Century by a committee, formalising previous variably defined values and practices. To put this into context, the religion of Islam had already been around for approximately 400 years by the time the Catholic doctrine of confession was formally codified.

The primary central text of the Christian faith is the Bible which comprises the Old Testament and New Testament. The Old Testament describes confession as a *public act* in Scriptures (Jeremiah 29, Ezra 9 – 10). Nothing secret is described or recommended. Confession is to God, not to or through a priest.

The New Testament describes the notion of a sinner confessing not just to God but to other humans, but says nothing about that other person having to be an ordained minister nor the confession being secret nor confidential.

For example, James 5:16 states:

Confess your sins **to each other** and pray for each other so that you may be healed

[emphasis added]

This says nothing of the confessional being a secret; in fact, it actively promotes the opposite, namely that information regarding the sin be shared publicly “to each other” in order to facilitate the sinner’s redemption by the role the community play in helping deliver the sinner from temptation, and praying for the sinner’s healing. This is the opposite of secret!

This has been part of the Anglican Church’s reasoning for revising their doctrine of confession to accommodate the reporting of child abuse and other serious crimes.

If secrecy, and indeed the entire doctrine of confession as described by the Catholic Church, is not directed by the Bible, where does it come from? This is examined in the following section.

Seal of Confession Doctrine is relatively new (certainly not 2000 years old)

The Catholic seal of confession was formally codified in canon 21 by the Fourth Council of the Lateran in the year 1215: about 1,175 years *after* the *death* of Christ. The Bible records nothing of Christ recommending secret confessional and it took the Catholic Church over a millennium before they decided to formalise it as such.

To test the modern relevance of the ‘secrecy’ of confessional by putting it into its correct historical context, lets have a look at some of the other canons that were codified by the Fourth Council of the Lateran in 1215 alongside the ‘secrecy’ of confessional:

Canon 69

Jews may not hold public office

Is that still appropriate and relevant in 2020? Or does such practice cause harm? Canon law has of course been able to be amended to remove or alter inappropriate canons as times change.

Canon 68

Jews and Muslims shall wear a special dress to enable them to be distinguished from Christians

Is that still appropriate and relevant in 2020? Or does such practice cause harm? Canon law has of course been able to be amended to remove or alter inappropriate canons as times change.

Canon 22

Physicians shall be excommunicated if they do not first exhort their patients to call in a priest before treating them.

In 2020 is it appropriate that patients attending an Emergency Department have treatment withheld while the doctor first tries to convince the patient to call a priest? Or does such practice cause harm (in conflict with the Hippocratic Oath)? Canon law has of course been able to be amended to remove or alter inappropriate canons as times change.

Canon 3

Loosely translates as binding secular authorities to deporting from their nation any citizen excommunicated by the Church as heretics.

Does that sound appropriate in 2020? Or perhaps Church canon law is not so much an act of God nor reflecting God's purpose; perhaps it is prone to being a political tool of Men relevant to the time and context in which it was written and not necessarily universally relevant for all times?

None of those 1215 canons are relevant in 2020 Australia. They are not appropriate nor do they further God's purpose, because the practices described by those canons causes harm. They were all codified in the same year and in the same document as canon 21 (the doctrine of the confession). That too is no longer relevant nor appropriate in 2020 Australia. It is a practice which causes harm and diverts the church and individuals away from God's purpose.

If canon law can be written so too it can be unwritten or rewritten. If canon law is written by humans then it can be as mistaken as are humans and can be as requiring of amendment as are humans. Canon law of course can be updated and amended. In Australia, canon law has been updated and amended in the *Code of Canon Law 1983*. **1983**. Both the Catholic and Anglican canon law including the doctrine of confession were updated again in **1989**.

But what if some traditions are worth preserving simply by virtue of being traditions?

Firstly, on the question of preserving harmful practices that are inconsistent with God's purpose, simply for the sake of "tradition", in his 2019 Christmas message Pope Francis, the Pope of the Roman Catholic Church, has warned senior Catholic clergy that:

"tradition is not static, it is dynamic"

And he cautioned the Church and senior clergy against rigidity in doctrinal interpretation.

Secondly, there is a vocation with a far older tradition and vocational oath of secrecy, pre-dating Christianity, which has set aside its tradition of secrecy and has embraced Mandatory Reporting of child abuse in the interest of child protection: the Medical Profession. This is now briefly examined for the Committee's convenience.

Secrecy already set aside for much older tradition in the interest of child protection

While the 805 year old codification of the doctrine of confession may be a ‘long standing’ tradition, secrecy has already been set aside in the interest of child protection by a far older vocational tradition, and without any controversy; namely the 2,500 year old doctrine of ‘patient confidentiality’ in the Medical Profession.

The Medical Profession predates the Catholic Church and pre-dates Christ. The Hippocratic Oath of medical practitioners dates back to the Ancient Greek physician Hippocrates from the 3rd to 5th Centuries BC, predating Christianity by 300 to 500 years, *predating Catholic codification of the confessional by 1,500 – 1,700 years* and predating Anglican confessional by 1,900 – 2,100 years. The Hippocratic Oath is a doctrine of medical ethics and is still sworn by doctors graduating from Queensland Medical Schools in 2020.

One of its most famous tenets that many are familiar with is: “First, do no harm”. (Catholic leaders would do well to adopt this doctrine into their own policies and practices and embrace it as strongly as they currently embrace doctrines such as ‘secrecy of the confession’).

Another tenet of the Hippocratic Oath is that of patient confidentiality, loosely translated as:

Whatever, in connection with my professional service, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret.

Confidentiality under the Hippocratic Oath is much broader than secrecy in the doctrine of the confessional. It covers not merely information relevant to the patient’s condition but *any other information* obtained including information not in connection with the professional service. This binds secrecy upon all information about the patient’s personal life however obtained.

This long-standing cultural and vocational practice would appear to be at odds with the notion of Mandatory Reporting of suspected child abuse, when suspected by a doctor as a result of a consultation with a patient. Yet doctors embraced Mandatory Reporting of child abuse.

Doctors and legislators recognised that ancient doctrines should not be binding and unchangeable merely by virtue of their status as a long-standing tradition no matter how well intentioned at the time of creation.

Clearly, such doctrines are a product of their time. As times change so too it becomes appropriate to revisit old doctrines and update and amend them as necessary to reflect the changing attitudes of wider society and the changing awareness of what constitutes safe practice.

The Medical Profession readily adopted Mandatory Reporting of child abuse, despite 2,500 years of tradition and practice of confidentiality. Mandatory Reporting of child abuse was, of course, debated within the profession. That debate was not focused on issues such as retaining traditions simply because they were longstanding, but was focused on what was best for the patient. For example, considerations such as whether or not Mandatory Reporting would harm patients through patients self-censoring or not disclosing abuse?

It was determined by the profession that there was no scenario in which a doctor could reasonably receive a disclosure or have a suspicion of child abuse and *not* escalate that information.

By contrast the defence of the seal of confession by the Catholic leadership has been largely based on preserving ‘tradition’ with disregard for the well-being of children. In response to criticism about this, some Catholic leaders have given lip service to claims that the secrecy of the confession contributes to child safety, but they have failed to provide any convincing explanation for this bizarre statement or provide any proof.

Senior clergy have tried to argue that Mandatory Reporting will stop people from confessing child abuse thereby depriving the Church of an opportunity for intervention and ‘counselling’. The falseness of such claims are examined at Myth 6 (namely that the documented history of the Church’s response to child abuse disclosed in the confessional is that offenders who confessed child abuse have not been counselled effectively but instead have been protected, had their offending minimised through absolution, and continued offending). Senior clergy also contradict themselves by simultaneously claiming Mandatory Reporting is not necessary because offenders simply don’t confess child abuse (in which case how is it they claim that confession is an opportunity for ‘counselling’?). Both claims cannot be true.

Myth 5: Offenders don't confess child abuse in the confessional

The evidence before the Royal Commission is that there are documented cases where offenders have confessed in the Catholic confessional to abusing children. Confessing to child abuse under Catholic protection of secrecy has been shown to have **perpetuated the abuse of children** in the following two main ways:

- Fueling the offender's cycle of abuse, reinforcing their denial of the harm caused
- Direct and intentional concealment of offending from police (use of 'secrecy')

Actual examples are now provided below.

Fueling the cycle of abuse – denial of true harm caused

The ritual of the confessional and the associated absolution has been demonstrated to have formed part of the cycle of repeat offending. By 'absolving' the offender of feelings of guilt, remorse and responsibility for the abuse that they have perpetrated, absolution has allowed offenders to deny the impact of their crimes and has formed the basis of an ongoing pattern of offending: offend – confess – offend – confess, etc. Meanwhile, the victims are left to suffer.

The obvious example of this is convicted sex offender Michael McArdle who pled guilty to crimes in 2003 and admitted that he had **confessed 1,500 sexual assaults of children to 30 different priests** over two and a half decades. Any one of those priests could have, and should have, reported McArdle's crimes to police and many victims would have been spared abuse. Every priest who took McArdle's repeated confessions yet did nothing to assist the child victims is culpable for those crimes as an accessory, has brought scandal upon their Church and has failed to practice their vocation consistently with God's purpose.

The offender's cycle of offending followed a predictable course: the abuser perpetrates crimes against a child; the abuser feels guilt for their crimes; the abuser attends confession and tells their secret and receives 'absolution'. This releases them from feeling guilt (meanwhile their victim is still suffering in silence unaware that other adults now know and could support the child and believe the child). The offender's release from feeling guilt is then the beginning of the next cycle until they abuse the next victim or reoffend against an existing victim.

Intentional concealment of offending from police

The Royal Commission has heard and published evidence of the Catholic Seal of the Confessional being intentionally used to conceal crimes. Confessional secrecy has conveniently suppressed reporting of crimes that would otherwise have embarrassed the Church. Offending clergy have used confession specifically to stop their supervisor from reporting the crimes.

Despite some senior Catholic clergy making public statements in the media that they are unaware of this happening, it is a matter of public record that the Royal Commission has published evidence from Catholic priests who report this having happened to them.

For example, one case is that of Father Philip O'Donnell who gave evidence to the Royal Commission in relation to the offending of convicted child abuser Father Victor Gabriel Rubeo and his use of the confessional to prevent O'Donnell from reporting the crimes to police.

Father Rubeo sexually assaulted a number of children and one of his victims reported the crimes to Father Philip O'Donnell. In the hope of preventing further assaults, the child victim advised Father Rubeo that the sexual assaults had been reported to Father O'Donnell.

On learning this Father Rubeo immediately approached Father O'Donnell and 'made confession'. Father O'Donnell gave absolution to the offender. Father O'Donnell's evidence to the Royal Commission was that Rubeo then laughed at O'Donnell saying words to the effect 'now you can't report me'. Father O'Donnell stated to the Royal Commission that it was his understanding that Father Rubeo's confession prevented O'Donnell from reporting Father Rubeo to police and prevented Father O'Donnell from coming to the aid of the children being actively abused.

In Father O'Donnell's own words:

"I gave absolution and as he walked out the door he laughed at me. In other words, he had made sure that I couldn't speak to anyone. I felt totally entrapped by that situation; that he had found out that I'd been told, he came to me, put himself in a confessional situation that therefore 'took me out'."

Father O'Donnell's evidence to the Royal Commission is that his understanding of Catholic Canon Law and the Seal of the Confessional is that he was bound from ever reporting the crimes to police. Many children have suffered as a consequence of this practice.

This case highlights the harm caused by the entrenched institutional culture that secrecy applies to any information given during the ritual of confession regardless of obvious lack of purpose of amendment. It highlights the power of the Myths of the confessional and the extent of misunderstanding of the limits of the confessional. Firstly, Father Rubeo clearly had no true purpose of amendment, and so a true confession had not actually occurred. Why did O'Donnell grant absolution? Instead, O'Donnell should have refused absolution and reported the admissions to police. Secondly, the power of the cult of secrecy caused Father O'Donnell to completely overlook the fact that he had also been given *direct disclosures by the victim*, which were in no way restricted from reporting to police by the Seal of Rubeo's confession.

In the hypothetical scenario that Rubeo's confession was somehow valid or secret, O'Donnell still had the option to report to police that a child had disclosed being sexually abused by Father Rubeo. The only effect of the seal of confession (according to Catholic doctrine) would have been to restrict O'Donnell from reporting to police that *Rubeo had admitted* the offending.

Yet, tragically, the institutional culture of secrecy is so entrenched and unquestioned that O'Donnell, a trained Catholic priest, believed as a result of institutional culture and training that the child's independent reporting of the abuse was somehow 'silenced' by Rubeo's 'confession'.

This is the danger of the rigid argument put forward by Catholic leadership and is the danger of the culture of unquestioned and unquestionable authority espoused by Catholic leadership, at the expense of the safety of Catholic (and non-Catholic) children.

Father Rubeo was eventually convicted by a jury thanks to the courage of his victims and no thanks to Father O'Donnell, and no thanks to the Catholic Church or the flawed interpretation of the doctrine of the confessional that secrecy applies to any person uttering words in a ritual despite the person being clearly, by their overt actions and omissions, not in the least bit penitent nor seeking amendment nor having any respect for that ritual, the Church or their own faith.

Myth 6: Mandatory Reporting will remove opportunity to ‘counsel’

Counselling of offenders

Senior Catholic leaders have tried arguing that the Church will be deprived of the opportunity to ‘counsel’ offenders via the confessional, for example if Mandatory Reporting provisions have the effect that offenders cease confessing. This is in direct contradiction of their argument that offenders do not use the confessional to report their crimes.

In their own words, various Archbishops of the Catholic Church have stated via media:

“...were trust in the absolute confidentiality of confession be undermined, then any chance a perpetrator would face the evil of their actions through confession would be lost; any chance a priest-confessor might have to impress upon the penitent the seriousness of their actions, the duty to self-report to the authorities and to get professional help ... would be lost”

The sad reality is that the Catholic Church has no compelling history of ever achieving or even attempting this when left to themselves. As the cases of sex offenders Michael McArdle and Father Rubeo show, the Catholic Church does not have a compelling history of utilising the confessional to ‘counsel’ the offender or to convince the offender to self-report to police.

Any argument against Mandatory Reporting / Failure to Report legislation based on its alleged impedance of the Church’s ability to ‘counsel’ offenders falls over when the evidence of the Church’s actual history of ‘counselling’ offenders is examined. Any alleged loss of counselling opportunity would be no loss to genuine child protection measures, because the Royal Commission has uncovered that for decades ‘confessing’ sins did nothing to help offenders cease offending and in fact has contributed to ongoing and escalating offending.

It is no loss to genuine child protection measures to remove a pathway that never resulted in child protection in the first place. As previously identified, the evidence has exposed that the secrecy and the ritual of confession has *exacerbated* offending, by giving offenders ‘forgiveness’ without real consequence and by creating the false perception that their crimes had been ‘dealt with’.

There are numerous specific cases, after victims have reported to police as adults many years later, of the offender openly stating that they considered it to be unfair to be prosecuted as their crimes (raping a child) *'had been dealt with'* by confession and absolution. Shamefully, documentary evidence exists of senior Church leaders espousing similar sentiments, including letters from clergy written to Archbishops petitioning on behalf of a sex offending colleague that it was 'unfair' for them to be deposed or face any other form of punishment, on the basis that the matter *'had been dealt with'* by way of confession, absolution and 'forgiveness'. Meanwhile victims were left to suffer without support (in fact were treated as 'the problem' by the Church).

The Church's documented response to known abuse, whether reported by victims or admitted by offenders, whether in the context of a formal confessional or elsewhere, has been to move known child sex offenders around different branches of the organisation, from parish to parish, despite knowing the danger the person posed to vulnerable children. This has merely given offenders opportunity to offend against more victims and has been shown to have delayed investigation/prosecution of offenders, and delayed delivery of health care to victims.

The 'confessional' is not the place to deliver effective offender counselling. Genuine professional offender behaviour management counselling is highly complex, and requires an environment in which the offender openly acknowledges the risk they pose. This is the opposite of an environment of 'secrecy' in which they are absolved of responsibility. Genuine offender counselling can only be undertaken by appropriately trained and experienced professionals who themselves are professionally accountable and supported. It is not suitable to be a part-time function for a well-meaning but untrained and over-worked busy parish priest. Such an approach would not be meeting the needs of the offender, the victims, the parish or the wider community.

That senior clergy of the Catholic Church lack this insight, and thought it appropriate to make public statements suggesting that the confessional be used for offender counselling, exposes the serious systemic risks at senior levels of the Catholic Church. IE they just 'don't get it'.

Such attitudes of senior leadership are obstacles to effective child protection measures being implemented if the institution is left to its own devices; it is evidence of the requirement for external accountability, such as Mandatory Reporting requirements and Failure to Report and Failure to Protect offences in the Criminal Code.

Counselling of victims

Similarly, senior Catholic leaders have publicly claimed (without citing evidence) that Mandatory Reporting will deprive the Church's ability to offer 'counselling' to child victims.

In their own words, various Archbishops of the Catholic Church have stated via media:

"...were trust in the absolute confidentiality of confession be undermined, then any chance a victim would mention this in confession to a priest would also be seriously diminished; any chance a priest-confessor might have to impress upon the victim the need to inform responsible adults (outside confession) and get to safety would be lost."

The ignorance behind this statement is profound given the Church's history of failing in their response to children reporting abuse and to adults reporting having been abused as children. The documented institutional response to a victim reporting has been to cover up the crimes, intimidate and isolate the victims and protect the offenders.

If anything has undermined trust in confession, it is the Church's own conduct and application of the secrecy of confession; placing protection of flawed man-made rituals ahead of the protection of children. Undermined trust cannot be ludicrously blamed on Mandatory Reporting.

Evidence before the Royal Commission is that the Catholic Church has a woeful history of responding to children who report abuse and this includes misusing the ritual of confession against the child. In documented cases where a child had reported abuse other than within the confessional, clergy would require that child undergo a ritual of 'confession' (for having been sexually assaulted as a child by an adult). The child was required to participate in a ritual of 'confession', receiving 'absolution' and then was made to 'forgive' the abuser, often face-to-face.

Unsurprisingly, survivors have reported that being subjected to this Church response ('confessing' when they had committed no sin) strongly reinforced the message that they were somehow responsible for the abuse, not the offender. This is a toxic culture and practice.

An organisation that thinks sexual assault of a child by an adult is a *sin* in which the child is complicit, as opposed to being properly aware that it is a *crime* perpetrated solely by the adult against the child, is not an organisation that can be safely entrusted with managing these matters on its own or with undertaking any form of ‘counselling’ without external scrutiny or at all. By its own long history the organisation has revealed itself to be one that must be required to immediately report abuse externally, such as to the police.

The Catholic Church’s response to reported abuse (dismissing the child’s trauma, making the child feel complicit, protecting the offender, shrouding the entire matter in secrecy) is an unhealthy model. For the Catholic Church to make any argument against Mandatory Reporting based on the preservation of such a model is a foundationless argument.

Mandatory Reporting will not undermine trust in the confession – in fact it may well help to salvage trust in the confession and the body of the Church; Catholic parishioners and the community will know that if a crime against a child is reported the priest will be required by law to escalate that information to a responsible authority. Accountability reinforces integrity.

The Archbishops offer no evidence in support of the wildly speculative position that Mandatory Reporting will deter children from reporting child abuse, including in the context of the confessional. The reality is that most children simply don’t consider adult matters such as Mandatory Reporting when first disclosing. Many disclosures are unintended. Alternatively, there is equal reason to anticipate that some victims may be *more likely* to report, precisely because they know the priest will now be required to act to assist them with escalating to an external authority; ie they are seeking to be supported through the process of formal reporting.

Mandatory Reporting has now long applied to other more trustworthy and child protection oriented vocations than clergy – for example teachers, nurses and doctors. Mandatory Reporting of child abuse in those professions has not had a documented widespread effect of preventing children from reporting abuse to those trusted professionals.

Students continue to disclose child abuse to trusted teachers.

Patients continue to disclose child abuse to trusted nurses and doctors.

Other relevant considerations

Papal Decree allows clergy to comply with Mandatory Reporting laws

Senior Catholic clergy in Australia have repeatedly and publicly raised concerns that Mandatory Reporting laws which apply to information received during the practice of confession might be requiring them to act contrary to their vocational commitments, namely a commitment to uphold the secrecy of the confessional.

Senior Catholic clergy have raised concerns that clergy will be required to choose between either:

- acting in compliance with the laws (reporting child abuse) in which case they are betraying their vocational commitment to secrecy; or
- keeping the child abuse secret as guided by their faith, in which case they are breaching the law (mandatory reporting laws and criminal laws) and harming children

Senior Catholic clergy have stated publicly that the vocational and personal consequences for any clergy reporting child abuse to police (if learnt about during confessional) can include excommunication from the Church, as per canons 983, 984 and 1388.

Obviously this would be a very unfortunate position for any individual clergy.

The good news is that, by directive from Pope Francis, head of the Roman Catholic Church, the Holy See has confirmed that all clergy are permitted to comply with local laws. This removes the previously alleged conflict between practicing the doctrine of confession and complying with child protection laws. It means all Catholic clergy should be safe to report child abuse, even if learnt about during a 'confessional' and not fear repercussions from their senior leadership (such as threat of excommunication) as they now have Papal approval.

On 7 May 2019 Pope Francis issued a 19 Article decree titled *Vos Estis Lux Mundi* (You are the Light of the World), issued as a *motu proprio* (an edict from the Pope to the Roman Catholic Church). The Papal Decree entered into force on 1 June 2019.

The Papal Decree establishes a basis for all Catholic Dioceses globally to establish internal church reporting structures in relation to:

- Sexual abuse of children and other identified vulnerable persons
- Other sexual offences (eg child exploitation material offences)
- Concealment or institutional cover-up of such offences

The Papal Decree obliges all clergy including deacons, priests, bishops and members of religious orders. Historically, the Church bizarrely exempts the most senior clergy, such as Bishops and Archbishops, from the same accountabilities as applied to lower ranked clergy.

The document has its obvious limitations. For example, most of the Articles focus on ‘canonical crimes’ or offences against the private rules of the Church and processes for internal reporting and investigation of child abuse. This has been criticised as being an extension of the entrenched Church culture of dealing with matters ‘in-house’ without regard to civil standards.

The criticism is valid but the document must be understood in its context. It must be remembered that the problem with the Church’s handling of child abuse has been two-fold:

- First, they have proven incapable of behaving appropriately in internal investigations;
- Second, they have passively and actively obstructed external (police) investigations.

The Papal Decree is a good start in beginning to address the first of these issues. It sets a tone for (hopefully) reforming the insular cover-up culture of the Catholic Church. It makes senior clergy liable for concealment of crimes.

As well, the Papal Decree affirms that clergy are expected to comply with civil laws relating to reporting child abuse to civil authorities and to not obstruct investigations by civil authorities. This is an incredibly important step towards addressing the second of the above issues.

While the document exempts information obtained via confessional from *internal* church reporting (Article 3, section 1), the Papal Decree does not issue such exemption in relation to compliance with civil laws including mandatory reporting laws. There is no exemption to compliance with civil reporting laws for information obtained during a ‘religious confession’.

The document stops short of directing all clergy to report abuse to police in jurisdictions where reporting is not required by civil law. This is why it is so important that Queensland (and all Australian jurisdictions) pass Mandatory Reporting, Failure to Report and Failure to Protect laws, that do not exempt religious confession – the passing of such laws actually helps Catholic clergy by ensuring that they are protected both by the secular law and the canon law when they do the right thing and report child abuse, including child abuse disclosed via the confessional.

The good news for Catholic clergy (and for parishioners, children and the community) is that this means that religious belief or practice no longer causes any impediment to reporting child abuse to police, including when learnt about during a confession. The Pope has decreed that complying with mandatory reporting is completely consistent with the faith.

Mandatory reporting laws can no longer be asserted to be an ‘attack on the faith’ (they never were) or to be in conflict with ‘religious freedoms’. The Catholic Pope has confirmed that this is not the case, clearing the way for Australian Archbishops including the President of the Council of Bishops Mark Coleridge to joyfully embrace both the Papal Decree and Mandatory Reporting laws and to be thankful for the hard work of so many people towards improving child protection including the safety of Catholic children.

As well, the Pope has abolished the “Pontifical Secret” controversially established by Pope Benedict XVI in 2001 which required that all child sexual abuse by clergy be kept secret. This was always an untenable policy having the effect of concealing crimes committed by clergy. The Papal Decree confirms that child abuse is to no longer be kept secret by the Church.

For the convenience of the Committee key elements of the Papal Decree are summarised in the following sections.

General guidance from the Preamble of the Papal Decree

In the preamble to the Articles the Papal Decree offers general guidance to senior clergy to convert their previously held misconceptions (for example regarding secrecy of the confession) and that *effective* actions will be required (ie not simply lip service to child protection).

The preamble states:

The crimes of sexual abuse offend Our Lord, cause physical, psychological and spiritual damage to the victims and harm the community of the faithful. In order that these phenomena, in all their forms, never happen again, a continuous and **profound conversion** of hearts is needed, **attested by concrete and effective actions** that involve everyone in the Church

[emphasis added]

The Papal Decree reflects that the genuine practice of the Gospel does not condone concealing crimes against children for the sake of preserving a ritual or traditional practice such as the secrecy of the confession, and that the Mission of the Church does not include allowing harm to children.

This a clear opportunity for the Australian Council of Bishops and those senior Catholic leaders who have until now opposed mandatory reporting's application to the doctrine of the confession to now implement the intent of the head of the Catholic Church, the Pope. The Papal Decree is a call to the senior clergy in Australia to convert their ways, and commit to *effective* action. Keeping child abuse secret because it was disclosed in a confessional is not effective action.

Specific guidance from Articles of the Papal Decree

The Articles of the Papal Decree offer more specific instructions to all clergy.

Article 1 details that clergy are required to comply with civil investigations and are not allowed to obstruct civil investigations:

Art. 1 – Scope of application

§1

(b) conduct carried out by the subjects referred to in article 6, consisting of **actions or omissions intended to interfere with or avoid civil investigations** or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in letter (a) of this paragraph.

[emphasis added]

Article 4 removes secrecy around reported child abuse:

Art. 4 – Protection of the person submitting the report

- §1. Making a report pursuant to article 3 shall not constitute a violation of office confidentiality.
- ...
- §3. An obligation to keep silent may not be imposed on any person with regard to the contents of his or her report.

Article 19 reaffirms that clergy are to report to external authorities according to the civil laws. Information obtained during a religious confession is not exempted:

Art. 19 – Compliance with state laws

These norms apply without prejudice to the rights and obligations established in each place by state laws, particularly those concerning any reporting obligations to the competent civil authorities.

The response of the Australian Catholic Church to the Papal Decree

Archbishop Mark Coleridge, Archbishop of Brisbane and President of the Australian Catholic Bishops Conference, released a public statement stating, *inter alia*:

The release of [the Papal Decree] ... shows that, for Pope Francis, the updating of universal Church law on the investigation and reporting of abuse against children and other vulnerable people is a real priority

...

It's a priority the Australian bishops share.

...

Archbishop Coleridge has said the Church in Australia will continue to implement protocols that go **beyond** the requirements of the *motu proprio*:

For example, **reporting allegations to the police** and other government authorities has been part of our Church practice for more than two decades. **We remain committed** to having the most effective practices possible

[emphasis added]

Archbishops should be tellers of truth. Their words should not be constructed ‘spin’ with carefully created gaps between the words with the intention of operating in those gaps. An Archbishop’s words should be straight-forward, open and honest and should reflect a genuine intention to implement the Mission of the Church.

If Archbishop Coleridge is truthful that his Church in Australia will comply with mandatory reporting laws and that he is “committed to having the most effective practices possible” then he can openly and formally support the reporting of child abuse disclosed during a confessional and cease publicly opposing this. Reporting disclosed or suspected abuse is certainly a more “concrete and effective action” (as required by the Pope) than *not* disclosing that abuse.

Archbishop Coleridge has also admitted to the Australian Catholic Bishops Conference that Church structures – some of which were devised centuries ago – can be improved:

... we must also be mindful that some of our practices fail to acknowledge and draw upon the best practice of other large, contemporary organisations...

The Papal Decree of 2019 is a very positive development for all stakeholders. It is a recent and major turning point that essentially now means that the instructions from Rome align with secular Mandatory Reporting and child protection laws. Clergy are now cleared by the Holy See to comply with Mandatory Reporting laws and other child protection requirements. This takes the wind out of the sails of any misguided controversy regarding the laws conflicting with faith.

This should be a time of joyous celebration for Catholics (grassroots members and leadership) that their religious practice now easily aligns with best practice child protection and the Gospel.

Pope Francis' Christmas address, December 2019

During his annual Christmas greeting to senior clergy in the Holy See, Pope Francis has reaffirmed his Papal Decree and cautioned against 'rigidity' in the interpretation of doctrine. His comments apply to all doctrines, including the doctrine of confession.

The Pontiff stated (as quoted from a translation):

People who take rigid positions, are usually using them to mask their own problems, scandals or imbalances

Reference to "scandal" has obvious significance to the international scandal of sexual abuse by clergy and policy of cover up (including Pontifical Secret) by those in the Church hierarchy.

The Pontiff further stated:

Tradition is not static, it is dynamic

The Pontiff clearly recommends against a rigid or dogmatic clinging to outdated interpretations of doctrine. Australian senior clergy who persist to claim that the confessional should be exempt from mandatory reporting will now be in conflict with their own Pontiff and the Holy See.

The Pope also emphasised the importance of being consistent with the Gospel rather than rigidly adhering to technical rituals. In the context of the secrecy of confession and reporting of child abuse, the obvious message to senior clergy from the Pope is that concrete actions that intervene to cease harm to a child, such as reporting abuse disclosed during confession, is more consistent with the Gospel of Christ than is preserving an 805 year old codified ritual that protects offenders.

Again, this is good news for all concerned. It is particularly good news for Catholic clergy whose consciences may now rest comfortably in the knowledge that compliance with child protection laws is no longer in any tension with the practices or rituals of their faith and vocation.

Mandatory Reporting does not apply to all confessions, only child abuse

There has been some misinformation being spread by some Catholic leaders by referring in broad terms to the “seal of confession being removed”, with the implication, through use of broad and inaccurate language, that the seal of confession is being removed *completely*, not just for crimes of child sexual abuse or child abuse. For grassroots members of the faith who are not able to delve into the detail of the issue, and who rely upon and trust in their leaders to advise them properly, this potentially causes great distress, quite needlessly.

The fact is that the Mandatory Reporting, Failure to Report and Failure to Protect legislation will not remove *all* confidentiality of the confessional.

The legislation, reporting requirements and offences will only relate to child abuse and mostly, in particular only sexual abuse of a child.

All sinners (penitents) confessing to any other sin will continue to be handled with existing confidentiality as per the doctrine of the confessional.

The Government might be wise to counter any misinformation from some Catholic leaders by making absolutely clear the true focus of, and limits to, the proposed legislation. The Committee might like to recommend that the Government take such measures, for example an information sheet explaining the actual purpose and effect of the laws, once passed.

The organisation responsible for most abuse cannot reasonably be exempted

After hearing 5 years of evidence the Royal Commission concluded that 61.4% of all of the religious institutions responsible for abuse were Catholic institutions. Catholic institutions are responsible for more child sexual abuse than all of the other institutions combined.

From a policy development point of view, it is simply not tenable that the organisation responsible for perpetrating and concealing the most abuse be exempt from Mandatory Reporting of abuse.

As well, the Royal Commission evidence revealed that of all institutions, Catholic institutions were the most resistant to reform and had the most entrenched organisational risk factors. For example, in 2019 the Australian Catholic Archbishops were still claiming that child abuse disclosed during religious confessions should be exempt from mandatory reporting, whereas the Anglican Church had already reformed this as early as 2014.

History and the evidence has informed the public and policy makers that sex offenders will find and seek refuge in any available safe haven, for example seeking refuge in whichever organisation has the most lenient approach to offenders. Traditionally this has been churches and specifically the ranks of the clergy, due to cultural factors that are attractive to child abusers, including:

- access to children and ‘trust’ in clergy indoctrinated into children;
- celibacy from adult sexual intercourse is unquestioned;
- unaccountable authority of the cleric is reinforced;
- once detected offending is ‘absolved’ rather than reported to police;
- culture of secrecy (including confessional);
- rape of children is treated as a ‘sin’ to be forgiven rather than a crime to be reported; and,
- after detection offenders are retained in employment in positions of trust.

It is obvious why sex offenders have sought out the safe haven presented by churches. The following quote is from sworn testimony to the Royal Commission by a convicted child abuser:

“...it just provided opportunity. I guess it attracted people who were looking for that...”

Grassroots Catholics (and their children) deserve leaders who take all necessary steps to ensure that their organisation is not the softest target and safest haven for child abusers. Everyday Catholics deserve the protection that comes from their leaders embracing policies which result in child abusers deciding not to seek refuge in the Catholic Church to abuse Catholic children.

There is no reason why the confessional should be allowed to continue to act as a safe-haven for sex offenders to facilitate their crimes. Safety of Catholic (and non-Catholic) children demands that mandatory reporting be universally applied to information disclosed in all contexts.

Also, it should be remembered that the purpose of Mandatory Reporting is not only to ensure an external reporting framework in relation to reporting abuse perpetrated by clergy or church lay persons; it is also to provide a clear unequivocal external reporting framework for reporting of all abuse that comes within the purview of the clergy, for example abuse of a child being perpetrated by non-institutionally associated adults.

The Mandatory Reporting, Failure to Report and Failure to Protect laws include protections for those making reports. Catholic clergy deserve access to these legal protections. If religious confession were exempted from Mandatory Reporting (making reporting optional) then Catholic clergy who report abuse disclosed during confession would be devoid of the appropriate legal protections which they have the right to share with every other Australian.

Bizarrely, by opposing Mandatory Reporting laws, Catholic leadership are arguing for a position in which their clergy have *less* protection when reporting child abuse than every other Australian. This is unjust to those good clergy who intend to do the right thing.

Non-compliance with the law could breach ACNC status

A number of senior Catholic leaders have made public statements either that they would break child protection laws and not report child abuse disclosed during religious confession or suggesting that they endorsed and encouraged clergy in their employ to willfully break child protection laws. Statements have been made publicly that the Church would pay any fines imposed upon clergy under mandatory reporting laws (in jurisdictions where the penalty is a fine).

Willfully breaking the law, or instructing members to break the law, or facilitating the breaking of the law (such as offering to pay the fines of guilty clergy to facilitate or promote clergy to break the law) – particularly as official church policy or coming from senior leaders – is potentially in breach of the requirements of the Catholic Church to comply with Australian laws, public policy and community safety to continue to receive Charitable Status and Public Funding.

Under the rules of the Australian Charities and Not-for-profits Commission (ACNC) it is allowable for the Church to contribute to debate such as stating a general policy position that it prefers that Mandatory Reporting, Failure to Report or Failure to Protect laws not be passed – but the Church risks breaching charitable status rules if the Church facilitates or promotes the breaking of laws once those laws are passed.

The following is an extract of the guidelines from the ACNC:

<https://www.acnc.gov.au/advocacy-charities>

A charity can promote or oppose a change to any matter of law, policy or practice, as long as this advocacy furthers or aids another charitable purpose. However, a **charity must not have a ‘disqualifying purpose’**.

Purposes that will disqualify an organisation from being a registered charity are:

- **engaging in, or promoting, activities that are unlawful**
- **engaging in, or promoting, activities that are contrary to public policy,**

...

The law requires all of your organisation's purposes to be charitable, except for those purposes that are 'incidental or ancillary to' your organisation's charitable purposes.

...

the way a charity undertakes advocacy, and its aims, **must be consistent** with the rule of law

...

Unlawful purposes:

As previously outlined, a charity cannot have a purpose of 'engaging in, or promoting, activities that are unlawful'.

[emphasis added]

Senior Catholic leaders are on record as stating that the doctrine of the seal of the confessional is **central** and **core** to the identity of the Church, and that absolute confidentiality is **central** and **core** to the Church's charitable purpose of ministering to souls, promoting religion, etc.

Therefore, by their own public statements, the doctrine of confession, or practice of confession generally (ie in relation to all matters not only child abuse matters), is not 'incidental or ancillary' to the Church's charitable purpose.

Therefore, the Church must conduct itself lawfully and must not promote unlawful activities, such as inciting clergy to break Mandatory Reporting laws, and the Church must not promote activities that are contrary to public policy (eg child protection policies) such as encouraging clergy to not report child abuse, including child abuse disclosed during religious confession.

Any act or statement from senior clergy which promotes the breaking of laws such as mandatory reporting and child protection laws may result in the Church's ACNC registration being revoked and the Church losing tax-free status.

Possible criminal consequences for inciting non-compliance

The risk of organisational loss of charitable/tax-free status is in addition to the risk that Archbishops and other senior clergy and senior lay persons who promote or facilitate criminal conduct of their clergy may themselves be breaking existing laws which make it an offence to be an accessory to a crime, or to incite a crime.

Under the Queensland *Criminal Code* clergy or lay leaders who continue to incite or encourage clergy to break Mandatory Reporting laws (once passed) may be ‘Accessories Before the Fact’. Clergy and senior lay officials of the Church who are complicit in helping another conceal the fact that they have broken Mandatory Reporting laws may be ‘Accessories After the Fact’:

Criminal Code – Section 7

- (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—
 - (a) every person who actually does the act or makes the omission which constitutes the offence;
 - (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
 - (c) every person who aids another person in committing the offence;
 - (d) any person who **counsels** or procures any other person to commit the offence.
- (2) Under *subsection (1) (d)* the person may be charged either with committing the offence or with counselling or procuring its commission.
- (3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.
- (4) Any person who procures another to do or omit to do any act of such a nature that, if the person had done the act or made the omission, the act or omission would have constituted an offence on the person’s part, is guilty of an offence of the same kind, and is liable to the same punishment, as if the person had done the act or made the omission; and the person may be charged with doing the act or making the omission.

Criminal Code – Section 8**Offences committed in prosecution of common purpose**

When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Criminal Code – Section 9**Mode of execution immaterial**

- (1) When a person **counsels another to commit an offence**, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled, or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.
- (2) In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by the other person.

Criminal Code – Section 10**Accessories after the fact**

A person who receives or assists another who is, to the person's knowledge, guilty of an offence, in order to enable the person to escape punishment, is said to become an accessory after the fact to the offence.

[emphasis added]

Alternative or additional to accessory offences, persons aware that a member of clergy has not reported to police child abuse disclosed in confessional may be guilty of the primary offence of Failure to Report due to being aware of the disclosed abuse and not reporting it.

Anglican Church have already modified their confession doctrine

The Anglican Church of Australia has already embraced Mandatory Reporting as compatible with the confession doctrine – and has also amended their doctrine to remove any doubt.

In January 2014 the Doctrine Commission of the Anglican Church of Australia produced their *Report to the Standing Committee on Confidentiality and Confessions*.

They state that their Report was commissioned by the General Synod of the Anglican Church of Australia at the request of the Professional Standards Commission in the context of the Royal Commission as well as in the context of acknowledging significant problems with properly responding to disclosures of child abuse preceding the Royal Commission.

The Report upholds principals put forward by antecedent Anglican reviews such as the 2011 Bishops Protocol 14 on Private Confession, **which directs the withholding of absolution in cases where there is no penitence.**

The Professional Standards Commission request for the review of the Seal of the Confessional noted:

A confession is not valid or complete where absolution is withheld because a perpetrator will not report his or her offence to the police or other authority.

[emphasis added]

In cases where there is no valid confession doctrine of Absolute Confidentiality *does not apply* and therefore no conflict exists between secular laws of Mandatory Reporting and Church Canon.

In relation to any existing secular civil law leniencies afforded to ministers of religion (such as the decision of a court not to prosecute a minister of religion for contempt of court for failing to ‘break’ the ‘Seal of the Confessional’) the Report finds that that the occasion has come for the church to forgo such leniencies, in favour of compliance with child protection laws.

The Report states:

In a number of jurisdictions, the civil law has come to recognise a legal privilege for confessions, so that ministers whose consciences are bound by a canon of the Church will not be held in contempt of the courts.

While we are grateful for these historically allowed protections from civil prosecution, this is an occasion for our Church to follow the apostolic pattern of voluntarily relinquishing these rights in certain circumstances, out of a consideration of the welfare of others. **There are clear deficiencies with the principle of absolute confidentiality.**

[emphasis added]

As the Attorney General noted in her introductory speech to the bill, Queensland is not a jurisdiction that has recognised any statutory legal privilege for religious confessions.

The Report then makes important findings regarding those ‘clear deficiencies with the principle of absolute confidentiality’. The following is reproduced directly from the Report’s findings as the original text is superior to any paraphrasing:

The application of absolute confidentiality privileges the individual penitent confessing to serious crimes or abuse over past present or possible future victims. This fails to recognise that we live in community and are responsible for our human relationships and that sin cannot be individualised.

...

*The biblical principle of love requires us to do everything in our power to further the welfare of all and protect them from harm. **The obligation to love does not terminate with the person making a confession but extends to victims of past and present actions and potential victims of future actions.***

For this reason it is necessary to revisit and amend the 1989 Canon and the principles reflected therein. Our pastoral priority must lie with victims and with potential victims in all matters of abuse.

Insofar as the practice of absolute confidentiality of Confessions has hampered our pastoral effectiveness to so many we should subject it to scrutiny. It's deployment appears to some to indicate self-protection and ecclesial self-interest and not godly wisdom or best pastoral practice.

Maintaining the practice of absolute confidentiality leaves priests and bishops open to manipulation by unscrupulous offenders because the making of a confession then paralyzes communication and action.

[emphasis added]

Additionally, the Report finds that (Anglican) Canon 113, including the 1989 rewrite, provides clear evidence of the appropriateness of exceptions, stating:

We now recognise that significant harm or risk of harm to past, present and potential victims may constitute such extraordinary circumstances as to override the pastoral imperative of confidentiality.

Finally, the Report makes its recommendations, concluding:

Absolute confidentiality should not apply to confessions of serious crimes and other acts that have led or may lead to serious or irreparable harm including domestic violence and sexual offences against children.

In these cases, a minister should encourage the penitent to go to the police voluntarily and accompany the person to ensure that this happens and to provide support.

If this does not happen then the minister may reveal the contents of the communication to the appropriate civil or church authorities.

[emphasis added]

Therefore, Mandatory Reporting is not in conflict with the Anglican Church doctrine of the Seal of the Confessional. Nor need it be in conflict with the Catholic Church doctrine.

Prevalence of offending & challenges with detection or prosecution

Senior Catholic clergy have publicly asserted that they anticipate that, following the implementation of Mandatory Reporting laws and creation of Failure to Report and Failure to Protect offences without exemption for religious confession, the incidence of offenders disclosing child abuse during a religious confession is likely to decrease. Therefore they anticipate that there will be few times that a member of clergy might find themselves required to report abuse disclosed during the confessions.

Senior Catholic clergy have also publicly commented on the potential investigative difficulties associated with detecting cases where clergy Fail to Report a disclosure of child abuse received during a religious confession. In other words, that it might reasonably be predicted that when such crimes (Failure to Report, Failure to Protect) have occurred, the probability of immediate detection of the crime would be slight, due to the secret nature of the crime (known at that time only to the person confessing and the confessor clergy).

These both seem like reasonable assertions and, assuming them to be true, neither are valid reason for not making the conduct of Failure to Report or Failure to Protect a criminal offence.

The probability, or lack thereof, of a crime being immediately detected is not valid reason for not criminalising the conduct. Many crimes are difficult to detect and this of course is not accepted as reason for not criminalising the behaviour. The sexual abuse of a child is often difficult to detect because of the secrecy under which the offences are perpetrated and of course this is not used as an argument against the criminalisation of such acts.

Similarly, prosecution challenges are no reason to not criminalise the conduct. Many offences face prosecution challenges but it is still of course accepted that they be offences. Child abuse is often very difficult to prosecute by nature of often being a witnessless crime, and relying on the testimony of the victim and other circumstantial evidence against the testimony of the perpetrator.

The fact is that many crimes that are perpetrated in secret do eventually come to light by various means. Consider the example of a child who, during a religious confession, discloses certain acts that constitute sexual offences perpetrated against them by a member of clergy or a friend or colleague of the clergy receiving the confession. Consider then that the clergy receiving the

confession, rather than reporting the abuse to police and providing other pastoral support to the victim, instead acts to conceal the abuse and protect their friend or colleague. For example, they act in a manner to dissuade the child victim from reporting, such as by taking the child's 'confession' and instructing the child to 'forgive' the offender.

To begin with the perpetrator of the abuse and the perpetrator of the Failure to Report and Failure to Protect will both appear to have 'gotten away with it'. However, that child will mature into an adult, and at some point be in a position to better understand the crimes perpetrated against them and report them to police. This will include reporting that the abuse was disclosed during a confessional to a member of clergy. That member of clergy will then be able to be prosecuted.

Consider another example, that of an adult who discloses during a religious confession that they have abused a child. The clergy receiving the confession fails to report that to police, thereby committing the offences of Failure to Report and Failure to Protect. With no other witnesses to this offence it might appear that the member of clergy evades detection and prosecution.

However, consider now that the offender is eventually detected and prosecuted for the sexual assault of children. During the investigation of these crimes the offender discloses that they 'confessed' the crimes (this may foreseeably occur in response to questioning by police or in response to questioning by expert medical examiners). The member of clergy to whom the offender confessed will then be able to be prosecuted. It will catch up with them eventually.

So the point is that it is foreseeable that, in addition to the obvious barriers to detecting these offences, there are scenarios where offences will likely be detected. At these times the misconduct needs to be properly described on the statute as a crime to be able to be prosecuted.

Prosecution is not the sole benefit of Failure to Report and Failure to Protect offences applying universally (ie no exemption for religious confession) – it sets the community standard for expected child safe conduct of organisations who ask to be trusted with our children and who accept generous funding from the tax payer. It is about resetting the organisational culture, from one of protecting offenders to one of protecting vulnerable children. Grassroots Catholics deserve a Church and deserve a leadership that values and protects their children, rather than a Church and a leadership which seeks to protect a ritual at the expense of human lives and souls.