



**ORDER OF MALTA  
AUSTRALIA**

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**DEFENCE  
OF THE FAITH  
INFORMATION PAPER**

DEFENDING THE SEAL  
OF THE CONFESSIONAL

# DEFENDING THE SEAL OF THE CONFESSIONAL

A renewed attack on freedom of religion, and specifically the Catholic Church, is evident in laws compelling priests to break the Confessional Seal. The thin end of the wedge on this is the current proposals on mandatory reporting of sexual abuse of minors, however, once the principle is established, it can be extended to include any other matter the State decides (e.g., violent crimes) as there is no logical stopping-point.

Indeed, the law has already been extended beyond actual or potential sexual abuse of minors. In South Australia, for example, the law requires reporting of actual or potential harm of a child, with harm defined broadly to include physical or psychological harm including sexual, physical, mental or emotional abuse or neglect (other than emotional reactions that are a “response to the ordinary vicissitudes of life”<sup>i</sup>). More broadly, it represents a renewed push by the State to interfere in the Church’s religious and sacramental practice.

## THE CURRENT SITUATION

### Royal Commission recommendations

The final report of the *Royal Commission into Institutional Responses to Child Sexual Abuse* was handed down on 15 December 2017. The report contained two recommendations relevant to mandatory reporting in the context of a religious confession:

1. the removal of exemptions to mandatory reporting laws for persons in religious ministry from the obligation to report knowledge of, or suspicions formed, relating to child abuse on the basis of information disclosed in, or in connection with, a religious confession<sup>ii</sup>.
2. that a 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”<sup>iii</sup>.

In contrast, there appear to have been no recommendations in the Report that other exemptions from mandatory reporting (such as solicitor-client privilege) be removed, these (unlike matters of religious faith) presumably being considered exemptions worthy of continued protection.

### Changes to mandatory reporting laws

Since that time, South Australia, the Australian Capital Territory, Victoria and Tasmania have each changed their mandatory laws to require the breaking of the Seal of Confession when



child abuse is confessed or disclosed. The possible penalties include imprisonment (Tasmania's law providing for up to 21 years imprisonment for breaking the mandatory reporting law).

The Northern Territory mandatory reporting laws already included religious confession.

Both Queensland and the West Australian governments have indicated their intention to pass similar laws.

The New South Wales government has indicated a preference for a nationally consistent approach. Relevantly to NSW, the Council of Attorneys-General had established a working group to consider the Royal Commission's recommendations relating to confessional privilege. Its report has been completed, but any decision about actions to be taken as a result will not be known until the Council's next meeting on 29 November 2019. Given that NSW is the only state in which the government has not announced an intention to change the law, the report is most relevant to NSW.

## THE CATHOLIC CHURCH'S POSITION

The Catholic Church in Australia supports nationally consistent mandatory reporting regimes and reportable conduct schemes (which include ministers of religion as mandatory reporters acting outside the seal of the Confessional) but does not consider the removal of legal protections for the sacramental Seal of Confession to be necessary nor appropriate.

The Church considers that the removal of protections for the confessional seal at law would be ineffective, counter-productive and unjust:

- **ineffective** because abusers do not regularly seek out Confession and would not seek it out if they knew that their offences would be reported;
- **counter-productive** because the rare opportunity a priest may have to counsel the abuser to turn themselves in to police and amend their life would be lost; and
- **unjust** because it would infringe upon the freedom of religion and establish as a matter of law a situation where a priest would not be able to defend himself against an accusation (including, potentially, by entrapment) made against him.

For these reasons, Catholic bishops and priests across Australia have indicated that even if the law was to change, they would not break the Seal of Confession. To do so, would breach Canon Law which provides that "*the sacramental seal is inviolable; therefore, it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason*". Priests are bound by canon law not reveal what they have learned during confession to anyone, even under the threat of their own death or that of others, it being provided that "*a person who violate directly violates the seal of the confessional incurs a latae sententiae excommunication*".

## POINTS OF LEVERAGE AGAINST THE CHURCH

Given the clear response from Catholic clergy that the Seal of Confession will be upheld, irrespective of state-based changes in the law, other attempts are being made to force the



Church's hand in the confessional in terms of complying with mandatory reporting laws, or punishing the Church for failing to do so.

### Implications for church buildings

In recent weeks, Melbourne City Council proposed to write to all Catholic churches within the municipality, requesting confirmation that they would comply with mandatory reporting laws. A list of those parishes that responded in the negative, or failed to respond, would be made public. It was even proposed that signs and billboards be erected outside such church buildings, purportedly warning the community that they are "unsafe for children".

On 15 October 2019, the Melbourne City Council passed a slightly milder resolution, commissioning a report on what role Local Government could take "in seeking confirmation from places of worship that they will comply with mandatory reporting laws, and appropriately responding where this is not the case." In addition to the proposed "unsafe" signs, other suggestions made at the Council meeting included the removal of rates exemptions for places of worship that failed to comply or taking the Church's intentions around mandatory reporting into consideration for "all future procurement opportunities." The canvassed removal of rates exceptions at a Local Government level is especially worrying in the context of ongoing pressure from some members of the Greens Party and more militant secularists to remove the Church's charitable and other exemptions from Federal Government taxation.

In each case, there is no evidence that the law is being broken; just an expression of intent from the Church about what they would do in the very rare situation that the issue arose.

### Implications for Catholic schools

In the Australian Capital Territory, at the same time the mandatory reporting laws were changed to require that the Seal of Confession be broken, the *Education Regulations 2005* were changed to require all non-government schools to work with the Minister for Education to implement the recommendations of the Royal Commission in order to maintain their registration as schools. This would include the recommendation around the Seal of Confession. The new regulations are as yet untested, but it is possible that there will be a test case involving a Catholic school, that takes students to the Sacrament of Confession during school hours, being threatened with de-registration.

### Other proposals

There have been unconfirmed reports that other attempts at exerting pressure on the Church are being considered, such as the requirement that those applying for a Working With Children Check confirm that they will comply with all mandatory reporting laws in order to obtain the relevant clearance; meaning Catholic clergy would be legally prevented from 'working' in the presence of children (i.e., say Mass, hear confession, be present on schools grounds).

These are just a few examples of the many ways in which a local council or a state government might seek to compel the Church into compliance or punish it for indicating an intention to uphold the Seal.



## WHAT CAN MEMBERS OF THE ORDER DO TO ASSIST?

There are several ways to defend the Seal of Confession:

1. Take action. Members in:
  - a. *Victoria*, and especially those living or working in the catchment of the Melbourne City Council area, to contact urgently local Councilors with whom they have a relationship, asking them to pull back from the proposals to erect “unsafe” signs, to remove rates exemptions, etc.
  - b. *Queensland, Western Australia and New South Wales* should speak to their local state members and any other government MPs with whom they have a relationship, asking them to protect the Seal of Confession. It is unlikely that this will be a matter that affords a conscience vote, so engaging with the government is critical.
  - c. *In all states and territories* should be watchful for any measures proposed to be taken that would seek to compel or punish the Church for its stance on confession (especially at local Councils).
2. Understand and make use of the Sacrament:
  - a. We are encouraged to learn more about the Sacrament of Reconciliation, – its theology and history in order to deepen our understanding of its indispensable value to the mission of the Church. Doing so will also prepare us to speak accurately when engaged in conversations about the Sacrament.
  - b. Ensure we are making regular use of the Sacrament and encouraging others to do so: it is more difficult for MPs to defend a practice that is only rarely used. The obligation to confess, sadly, is more “honoured in the breach” in Australia which is unlikely to differ greatly from the US where data from the Centre for Applied Research in the Apostolate (Georgetown University) in 2008 showed that 3/4 of all American Catholics “*never used*” the sacrament or did so “*less than annually*” - notwithstanding that the Precepts of the Church require confession of serious sins at least annually.

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<sup>i</sup> *Children and Young People (Safety) Act 2017 (SA)*, s17(1).

<sup>ii</sup> Royal Commission into Institutional Responses to Child Sexual Abuse (2017). *Final Report, Recommendations*. Barton, ACT: Commonwealth of Australia, recommendation 7.4.

<sup>iii</sup> *Ibid*, recommendation 35(a).

