



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

Bishops Commission for Canon Law

Bishop Peter Connors (Chairman)
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RESPONSE

The Australian Catholic Bishops Conference welcomes the opportunity to comment on the Schema Recognitionis Libri VI CIC. The Bishops Commission for Canon Law, advised by the Australian Catholic Council for Canon law, offer the following comments.

1. The Praenotanda acknowledges that *Pastores nimia parcitate usos esse systemate poenali canonico in exercende munere gubernii*. While this document provides two reasons for this, we suggest a third, more important reason: that the processes for the application of the church's penal system are lacking in clarity. The unavailability of jurisprudence on non-matrimonial cases compounds the problem. We believe that by making jurisprudence and precedence known to bishops and judges, the bishops would be in a better position to apply the church's penal legislation.
2. We note that a methodology adopted in the revision of Book VI is to change facultative penalties to obligatory penalties. Bearing in mind that one of the purposes of penal law is the reform of the offender, the removal of the bishop's discretion and the judges' discretion, may undermine this purpose of the law. We believe that the bishops will be assisted to use the church's penal law with greater confidence if the processes of Book VII are characterized by greater clarity. Therefore, we believe that Part IV of Book VII, *De processu poenalis*, should be reviewed in conjunction with the revision of Book VI.
3. The role of bishops is a matter of great concern. Church law does not recognize the range of responsibilities and relationships of the bishop: pastoral, legislative and judicial responsibilities; relationships to the offender, victims of crimes and all members of the particular church.
4. The Schema rightly contains a number of principles that guide the imposition of penalties. An important principle that deserves restatement or explicit reference to c. 391 §2 is that the diocesan bishop exercises judicial power *sive per se sive per Vicarium iudicalem et iudices*. In particular the diocesan bishop should exercise judicial

power personally only rarely. It could be stated that unless he himself is skilled in canon law, the bishop should keep in mind the principle of c. 391 §2.

5. The Schema is slanted very much towards *Normae de gravioribus delictis*. The alignment of delicts relating to sexual abuse with delicts of faith and doctrine can result in harm to the church.
6. The Schema contains delicts additional to those present in CIC/1983 and in *Normae de gravioribus delictis*. This situation contrasts with the ninth principle of Revision, that guided the revision of the Pio-Benedictine Code leading to the promulgation of the current Code. This perception arises particularly in relation to those delicts which have been reintroduced from CIC/1917 (cc. 1379 §5, 1388 §2.)
7. The Schema lacks consistency and clarity in use of language and terminology.
 - a. C. 1311 §2 *Qui in Ecclesia praees* lacks precision. Explicit reference to c. 371 §2 in which a similar phrase is used, would be helpful, if the same meaning is intended.
 - b. Use of consultors. C. 1720 uses two different terms :*assessoribus* (§1 3°) and *consultorum* (§2). "Consultors" is often understood as referring to the members of the *collegio consultorum* (c. 502 §2).
In using assessors it should be pointed out that the assessors should be persons who have expertise in the area for which the person is being accused.
 - c. The phrases *iusta poena* ('with a just penalty') and *pro delicti gravitate* ('in accordance with the seriousness of the offence') are used frequently throughout the schema. The legislator surely intends that all penalties are both *iusta poena* and *pro delicti gravitate*. This might be stated as a principle of law in a reworking of c. 1338.
8. Civil law and canon law We note that canon law operates in a society which is bound by civil law. This impacts the church's penal law and processes.
 - a. Canon law can operate beside civil law, but cannot operate simultaneously with civil law. Some canonical investigations cannot be carried out while civil law is conducting investigations.
 - b. C. 1395 §3 of the Schema defines a delict in terms of a minor below the age of fourteen years. The age for a similar civil law offence will vary from jurisdiction to jurisdiction. It would be most unfortunate if the church's standard of protection of minors were seen to be lower than that of the civil law.

- c. We express a concern that the holding of evidence in relation to c. 1395 §3 may constitute a breach of civil law.
- d. The conduct of civil law investigations, trials and imprisonment may delay an investigation by the church authority. Does the legislator propose that such enforced delays will affect prescription?
9. Pontifical secrecy
- a. In society 'secrecy' is often considered to be a negative term and the language of secrecy causes harm to the church. The term, 'professional privilege' is respected by society. Professional privilege and confidentiality in the conduct of trials is respected.
- b. Defining a breach of pontifical secrecy as a delict presents a very negative image of the church and fails to honour the range of issues that may be covered by pontifical secrecy.
10. Reserved delicts.

Listed in *Normae de gravioribus delictis* (2010) are delicts which are reserved to the Congregation for the Doctrine of the Faith. We note that the fact that a particular delict is reserved according to the 2010 Norms, is not always stated in the Schema. .

Delict	Gravioribus Delictis	Schema	"Reserved.." stated in Schema
Retention or throwing away Consecrated species	Art 3 §1 1°	c. 1382 §1	Stated
Consecration outside of Eucharist	Art 3 §2	c. 1382 §2	Not stated
Attempted celebration of Eucharist	Art 3 §1 2°	c. 1379 §1 1°	Not stated
Attempted ordination of a woman	Art 5	c. 1379 §3	Stated
Prohibited participation in religious rites	Art 3 §1 4°	c. 1381	Not stated*
Absolution of an accomplice	Art. 4 §1 1°	c. 1384	Stated
Attempted absolution	Art. 4 §1 2°	c.1379 §4	Not stated
Pretended absolution	Art. 4 §1 3°	c.1379 §6	Not stated*
Solicitation in confession	Art. 4 §1 4°	c. 1385	Not stated
Violation of the seal	Art. 4 §1 4°	c. 1386	Stated **
Recording of confessional statements	Art 4 §2	c. 1386 §3	Not stated
Offences against the Sixth command.	Art 6 §1	c. 1395 §2	Not stated*
Possession of pornographic images of minors	Art 6 §1 2°	c. 1395 §3	Not stated

We note in the above table that in the Schema

- some canons (*) are broader in scope than the related articles in *Normae de gravioribus delictis*.
- The canon (**) and the article in *Normae de gravioribus delictis* differ in whether the delict is reserved to the Apostolic See.

It will be necessary to ensure that pastors have certainty about what is reserved to the Apostolic See/CDF.

11. Penalties -Canon 1336 .
 - a. More precise definitions of excommunication, interdict, suspension would assist bishops and others.
 - b. Other canons in the schema contain many references to the penalties in c. 1336. Most references are clear that the penalty will include one or more of those specified in the canon (e.g. cc. 1365 'de quibus in can. 1336'); c. 1385 seems to suggest that all the penalties will be imposed. ('poenis in can. 1336 statutis')
12. The matter of 'administrative leave' (c. 1722) can result in serious harm to the rights of clerics. Part IV of Book VII, but especially canon 1717-1728 need to be revised in order to protect the rights of those accused and to protect those who administer the law. In particular we express concern for situations in which rights are harmed because no conclusive action brings the matter to resolution.

In addition, c. 1717 §2 rightly affirms the protection of *cuiusquam nomen* . While the Latin provides for *cuiusquam* to refer to both a physical and a juridical person, the usual English translation does not do so. It is important that the good name of juridical persons be protected.
13. Canon 1395 has been expanded. However, we comment:
 - a. The situation of a cleric engaged in 'grooming' of minors remains a problem as it is not addressed.
 - b. Civil law recognizes that the difference in age between an offender and a victim needs to be considered in cases dealing with minors. While this may not be relevant when the offender is a cleric, it may be relevant when using c. 1395 §4.
14. Can. 1342 §2 states clearly that perpetual penalties cannot be imposed or declared by means of a decree. Therefore they may be imposed only by means of the judicial process. Can. 1720 seems to imply that perpetual penalties (such as laicization) will be able to be imposed by decree rather than judicial process. Clarification is needed.

15. Canon 1367 (formerly c. 1366) is contradicts with the 1993 Directory of Ecumenism and fails to recognize difficulties experienced by spouses in inter-church marriages. Interestingly, it does not address the situation of inter-faith marriages.
16. We observe that an increasing number of matters are referred to the Congregation for the Doctrine of the Faith and question the wisdom of this.