

## Final Public Hearing into the Catholic Church in Australia

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**Canon Law on Reporting:** In contrast to the Church's canon law since at least the 12<sup>th</sup> century, Pope Pius XI in 1922 imposed the strictest secrecy over information about child sexual abuse by clerics. This secrecy was confirmed by Pope John XXIII in 1962. It was expanded in 1974 by Pope Paul VI with his pontifical secret. The pontifical secret was confirmed in 2001 by Pope John Paul II, and expanded by Pope Benedict XVI in 2010. There were no exceptions for reporting these crimes to the police.

In 2010, the Vatican spokesman, Fr Lombardi announced an exception by stating that bishops should obey civil reporting laws, but that reporting had to be done "in good time, not during or subsequent to the canonical trial."

If there are no applicable civil reporting laws (as is the position for most cases in every State and Territory of Australia, except New South Wales and Victoria), the pontifical secret prohibits the disclosure to the civil authorities of allegations of sexual abuse made to Church superiors and any information arising from their enquiries. Consistent with canon law, the Catholic Bishops Conferences of Italy and Poland in 2012, 2014 and 2015 respectively, stated that their bishops would not report priest sex abusers to the civil authorities because their civil laws did not require it.

Even if canon law's prohibition on reporting is overcome by uniform State and Territory laws along the lines of those existing in New South Wales, canon law prohibits the disclosure to the civil authorities of any information that reveals further abuse by the accused after the commencement of canonical proceedings. This was confirmed by the Congregation for the Doctrine of the Faith in March 2015 in the Italian case of Fr Inzoli. In the Australian cases of Nestor and Gannon, allegations of further abuse were uncovered after the initial investigation started.

The Australian Catholic Bishops Conference submitted *Towards Healing* to the Congregation for the Doctrine of the Faith as part of its protocol for dealing with child sexual abuse. Clause 39 says that if allegations amount to criminal offences, they must be reported to the police. On 22 February 2013, the Congregation advised the Australian bishops that clause 39 of *Towards Healing* was "only applicable to non-clerics."

On 15 February 2016, the President of the Pontifical Commission for the Protection of Minors, Cardinal O'Malley, stated that obligations under civil law must be followed, but "even beyond these civil requirements, we all have a moral and ethical responsibility to report suspected abuse to the civil authorities." This statement was a welcome indication that canon law might change. Ten months later, on 6 December 2016, the Pontifical Commission published its guidelines for child abuse protocols to be issued by national Catholic bishops' conferences. It would have been a simple matter to have included Cardinal O'Malley's statement as part of those guidelines. It is not there.

In 1996 and 2002, the Irish and American bishops respectively tried to convince the Holy See to write into canon law for their countries the principle stated by Cardinal O'Malley in February 2016. The Holy See rejected their requests, only allowing reporting where the civil law required it.

In 2014 the United Nations Committees for the Rights of the Child and against Torture requested the Holy See to abandon secrecy over child sexual abuse and to impose mandatory reporting under

canon law. In September 2014, Pope Francis refused the request. Canon law still prohibits disclosure to the civil authorities in most cases of child sexual abuse in Australia.

**Canon Law and the Church Disciplinary System:** The pontifical secret prevents this Commission from assessing properly the claim by the Church that “everything has changed”. The only change to canon law that we know about is an extension of the limitation period. Not a word has changed in Canon 1321, which two Vatican appeal courts interpreted as meaning that a priest cannot be dismissed for paedophilia because he is a paedophile. Not a word has changed in Canon 1341 that requires a bishop to try and cure the priest before he is put on a canonical trial. Not a word has come out of the Vatican to indicate that these canons are being interpreted differently from the past. Pope Francis’s claim that he and his predecessor have adopted a “zero tolerance” approach is not borne out by the figures he presented to the United Nations: only one quarter of all priests found to have sexually abused children have been dismissed. If zero tolerance in a professional context means dismissal – as it normally does - that’s a 75% tolerance not zero. While the pontifical secret prevails, the Church disciplinary system requires State supervision because it is not up to standard.

**Mental Reservation:** Mental reservation was defined by Cardinal Connell as using an ambiguous expression realising that the person who you are talking to will accept an untrue version of whatever it may be. Since Pope Benedict’s Pastoral Letter to the Irish people in March 2010, the policy of the Church has been to blame individual bishops and to the use of mental reservation about the role played by canon law (and therefore the popes) in the cover up.

The Church’s submission to this Royal Commission on *Towards Healing* was described by its spokesman as a “warts and all history going back many decades”. But the biggest wart of all, the pontifical secret, is never mentioned. On page 132 of the submission, the Church states that “there is nothing in the 1983 Code that is in conflict with any applicable civil law obligations relating to the reporting of allegations of child sexual abuse.” That statement is true, because the secrecy provisions aren’t in the Code.

No mention is made in the submission of the statements by five senior members of the Roman Curia between 1997 and 2002 (Cardinals Castrillón and Re, Archbishops Bertone and Herranz and Professor Ghirlanda) and four heads of national Bishops Conferences (Cardinals Billé, Lehmann, Schotte and Rodriguez Maradiaga) that bishops should not report clergy sexual abusers to the police. Cardinals Castrillón and Re stated that reporting to the civil authorities raised issues with canon law. Cardinals Castrillón and Rodriguez Maradiaga said that bishops should be prepared to go to jail (that is, break the civil law) rather than report paedophile priests to the police.

Some Church spokesmen and canon lawyers have stated that canon law does not prevent Church authorities reporting abuse to the police because the secrecy provisions only apply to the Church’s internal proceedings. Of course they only apply to them. But complaints to Church authorities and their enquiries about them were the source of virtually all the Church’s information about clergy sexual abuse. That fact is not mentioned.

Bishop Geoffrey Robinson has said that “the major obstacle to a better response from the Church has been the Vatican,” and that it is “manifestly impossible to give an adequate response (to the scandal) while maintaining that the pope cannot have been wrong.” While this attitude of failing to acknowledge the role canon law in the cover up continues, canon law will stay the same, and the

culture of secrecy and clericalism which was largely responsible for sex abusing priests not being brought to justice will remain entrenched in the Church.