

Frank Brennan is a Jesuit priest, and is just concluding his appointments as professor of law at Australian Catholic University and Adjunct Professor at the Australian Centre for Christianity and Culture, the Australian National University College of Law and the National Centre for Indigenous Studies, as well as National Director of Human Rights and Social Justice for Jesuit Social Services. On 6 February 2017, he will commence his new role as CEO of Catholic Social Services Australia.

In May 2015 he returned to Australia, having spent a year as the Gasson Professor at the Boston College Law School. His latest books are *No Small Change: The Road to Recognition for Indigenous Australia* (University of Queensland Press, 2015), *Amplifying That Still, Small Voice* (ATF Theology, 2015), *The People's Quest for Leadership in Church and State* (ATF Theology) and *The 2015 Gasson Lectures: Maintaining a Convinced and Pondered Trust* (ATF Theology).

An Officer of the Order of Australia (AO) for services to Aboriginal Australians, particularly as an advocate in the areas of law, social justice and reconciliation, he was the recipient of the Migration Institute of Australia's 2013 Distinguished Service to Immigration Award and of the 2015 Eureka Democracy Award in recognition of his endeavours which have contributed to strengthening democratic traditions in Australia.

On 3 December 2016, *The Weekend Australian* published an article 'Breaking the seal of the confessional will not save children' which they commissioned him to write and which is available at <http://www.theaustralian.com.au/news/inquirer/breaking-the-seal-of-the-confessional-will-not-save-children/news-story/6af45227737df1b8e86e650c6ade7f62>. He understands that it's because of the views expressed in this piece that the royal commission has invited him to come and discuss: 'To what extent has the operation of the Sacrament of Reconciliation contributed to the occurrence of child sexual abuse in Catholic institutions or affected the institutional response to this abuse?'

He happily accepts the invitation, while being sceptical about his capacity to assist the commission much further given that he is not a canon lawyer, nor a pastoral theologian, nor a parish priest. He understands that he is to be on a panel with people expert in the relevant areas. Having been a priest for 31 years and having been a law professor and a long time human rights advocate, he is happy to make these points and to join in the panel discussion:

- The statistics speak for themselves. The Catholic Church has had a problem with child sexual abuse and it needed state assistance and community pressure to acknowledge publicly the extent of the problem and all its ramifications.
- Hopefully the royal commission can formulate universal principles and standards which can be applied to all institutions (including the Catholic Church) ensuring better protection of children.
- The state has a legitimate interest ensuring that Church structures and procedures comply with the principles and standards set down in laws enacted by parliaments.
- It will be a matter for the Catholic Church to determine how best to comply with those principles and standards, consistent with Church teachings and structures.
- I don't think the operation of the Sacrament of Reconciliation contributed to the occurrence of child sexual abuse in Catholic institutions. I concede that the royal commission may have evidence to the contrary. If such evidence exists, I've not seen it.
- I don't think the operation of the Sacrament of Reconciliation has affected the institutional response to child sexual abuse. I concede that the royal commission may have evidence to the contrary. If such evidence exists, I've not seen it.

- One aspect of the Sacrament of Reconciliation is the seal of the confessional which prohibits the priest from disclosing details of the sins confessed by a penitent.
- As a priest, I am morally obliged to honour the seal of the confessional. If I were to breach the seal, I would be infringing canon law and be rightly subject to loss of my faculties as a practising priest.
- No one has ever confessed paedophilia to me in confession during my 31 years as a priest.
- In 2012, the Irish Parliament legislated to require reporting of child sexual abuse. However the law provides a defence when the child (over 14 years and able to make the decision) does not want the report to be made. The law also provides that it ‘is without prejudice to any right or privilege that may arise in any criminal proceedings by virtue of any rule of law or other enactment entitling a person to refuse to disclose information’.
- I have not been able to adduce any evidence from the Republic of Ireland that the seal of the confessional is no longer in practice inviolable. I understand that the Catholic Church in Ireland still instructs its priests that the seal is inviolable.
- I have not been able to adduce any evidence from the Republic of Ireland that the 2012 legislative change has affected the operation of the Sacrament of Reconciliation contributing to a decline in the occurrence of child sexual abuse in Catholic institutions or enhancing the institutional response to this abuse.
- If the law were to change overriding the confidentiality of the confessional, Catholic priests would be placed in the invidious position of having to choose conscientiously between their religious duty and obedience to State law. I would conscientiously refuse to follow the amended law in the most unlikely event that a penitent were to confess criminal child sexual abuse.
- In secular /legal terms, I view the seal of the confessional as akin to a privilege similar to legal professional privilege.
- Statements made by a penitent to a priest in the sacrament of confession made for the dominant purpose of receiving absolution should remain privileged. Just as lawyers maintain secrecy about matters disclosed to them by their clients when seeking legal advice, priests can and should maintain the secrecy and confidentiality of any sin confessed to them in the sacrament of confession. The seal of the confessional ought be viewed akin to legal professional privilege because to do otherwise infringes religious freedom which is a fundamental human right.
- Of course, were a child or any other person to disclose wrongdoing by a third party, that would be an altogether different matter.