WHY THE SEXUAL ABUSE OF CHILDREN IS A SECRET IN THE VATICAN

WILL AUSTRALIA'S BISHOPS DEMAND THAT POPE FRANCIS ACT NOW TO PROTECT CHILDREN?

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WHY THE SEXUAL ABUSE OF CHILDREN IS A SECRET IN THE VATICAN

WILL AUSTRALIA'S BISHOPS DEMAND THAT POPE FRANCIS ACT NOW TO PROTECT CHILDREN?

INTRODUCTION AND EXECUTIVE SUMMARY

1. The primary purpose of this report is to bring attention to the existence of laws and regulations currently in force in the Catholic Church that constitute a clear threat to the current and future safety of children within all catholic institutions.

2. A secondary purpose is to make recommendations to address this threat.

3. The Royal Commission in Australia and Commissions in other countries have already highlighted that the silence and secrecy surrounding the sexual abuse of children was a major factor in both the abuse itself and the scale of the abuse in the Catholic Church.

4. Pope Francis has stated that the crimes and sins of sexual abuse of minors cannot be kept secret any longer but today Canon Law still ensures the clergy maintain absolute and permanent secrecy regarding allegations and proceedings through the "Pontifical Secret".

5. Indeed, clergy who actually have the courage to report suspected sexual abuse to civil authorities, might contravene the Pontifical Secret and face severe sanctions such as dismissal or excommunication.

6. Despite misleading statements from the Vatican suggesting that clergy have a moral and ethical responsibility to report suspected abuse to authorities, it is clear that unless the civil requirement is obligatory, Canon Law prevents such reports.
7. In Australia church officials only have to provide information when requested to do so by authorities and they are not obliged by Australian law to report incidents of child sexual abuse of their own accord.

8. In Australia, where mandatory reporting of child sexual abuse is legislated at state level, no child protection legislation includes priests or church employees in the categories of professionals who are required to report child abuse or possible child abuse.

9. Over the past 100 years there have been many changes to Canon Law, however, the reality is the Popes have not legislated to make children any safer in 2016 than they ever were previously.

10. To this day Canon Law protects abusing clerics in enabling their transfer from one place to another even after a complaint has been received but providing an investigation has not begun.

11. The culture of the church, in order to avoid scandal, has clearly focussed on protection of its own reputation and the accused clerics, alongside a total obsession with secrecy.

12. This obsession with secrecy continues to sacrifice the children. It completely disables the power of parents and guardians to protect their children as they were, and are, unaware of the dangers to their children present in our catholic institutions.

13. Pope Francis has the power to put a stop to this disgraceful situation of sexual abuse of children by clergy with the removal of the "Pontifical Secret" and his introduction of a worldwide requirement of all clergy and staff in the church to report any suspected abuse of children to civil authorities.

14. It is our firm view that, unless the provisions of Canon Law relating to child sexual abuse, which were created and re-enforced by successive Popes, are
repealed, the crimes and sins of sexual abuse of minors in Church Institutions will continue to be kept secret and indeed the church cannot claim its institutions are safe and secure.

RECOMMENDATIONS

15. The Catholic Church must now tell the truth and admit, through its most senior representatives, that, notwithstanding its public and apparently authoritative statements that bishops and clergy are encouraged to report abuses of children by clergy, the current law clearly says the opposite. Indeed, not only does Canon Law not permit such reporting unless required by civil law, it provides severe sanctions for those who do so.

16. Australian Bishops, in their role as leaders must acknowledge that time is of the essence for this abomination within the church to be addressed fully by the Pope, so that present and future members of the church can experience the love and security of a safe Christian faith based community.

17. Australian Bishops, on behalf of the body of the church, must demand that Pope Francis acts to repeal these draconian laws about secrecy that provide a clear and present danger to the safety of our children in Catholic institutions.

18. Australian Bishops must call on the Vatican to enact Canon Law that requires mandatory reporting of sexual abuse of children in Catholic institutions to civil authorities, irrespective of the applicability of civil laws of countries around the world.

19. Unless and until the Vatican brings about these changes, Australian Bishops must accept responsibility to do two things, namely:
20. To inform every member of the Australian Catholic Church, as well as parents and guardians of children attending Catholic institutions, that the church has laws and regulations in force which persist in maintaining secrecy regarding child sexual abuse and which ensure allegations of sexual abuse against children are kept secret.

21. To make a public commitment to reporting all sexual abuse of children in all Catholic institutions to the civil authorities, irrespective of the reporting requirements which currently exist throughout the various states in Australia.

22. The Royal Commission is requested to consider the material provided in this report, to assist it in:

23. Confirming that the Canon Law, that shrouded the abuse of children in secrecy and silence, was a major factor behind the acts of child sexual abuse and the scale of the abuse in the Catholic Church.

24. Recommending that the Australian Government should introduce a national, uniform regime for mandatory reporting of sexual abuse of children. The legislation for such a regime should include clergy and religious and should, specifically, override any moral, ethical or Canon Law around secrecy.

25. The Truth, Justice and Healing Council (TJHC), which represents the Catholic Church before the Royal Commission, is requested:

26. To publicly address the matter of Canon Law and secrecy and to confirm that these laws are still in place.

27. To ensure that parishes and congregations are educated and informed, specifically from the altars of the churches, about the relevant content of Canon Law and its implications. In this, the action of the Supervisory Group of the Council would be essential.
28. The media has an important role to educate the public, particularly where very serious issues, affecting children, are concerned. We believe the matters raised in this report reveal a very serious issue and that the media need to be alerted on every level. We intend to join others in carrying out this task immediately.

BACKGROUND

29. The authors of this report are Queensland Catholics who have, over the past 3 years, tried to support survivors who suffered sexual abuse and their families within Catholic institutions. We would imagine that, like most Catholics, we have accepted the assurances from the hierarchy of the church that all necessary protocols and regulations are being implemented to safeguard our children in Catholic institutions, now and in the future.

30. However, over the past few weeks, we have been amazed to read of reports which allege that a succession of Popes, including Pope Francis, have presided over and endorsed provisions of Canon Law that confer a total and permanent secrecy on all allegations and proceedings relating to child sexual abuse by clerics in the Catholic Church. These reports are contained in an article by Karen Brooks titled "Silence can not be the Rule" (Refer Courier-Mail of 7 March 2016) and also to a book authored by Kieran Tapsell titled "Potiphar's Wife: The Vatican Secret and Child Sexual Abuse"

31. Being aware of the significance of these reports, for the future safety of children, and mindful that, to our knowledge, the TJHC has not referred to the Pontifical Secret in any of its submissions to the Royal Commission, on behalf of the church, we decided to undertake our own research of the church's Canon Law and its repercussions. We do not claim to be experts on Canon Law and we do concede the extent and format of changes over a hundred-year period, not to mention the
translation from Latin to English, have caused us difficulties. However, we are confident that our conclusions and recommendations are based on a correct interpretation of Canon Law provisions as they relate to the sexual abuse of children.

PRELIMINARY RESEARCH

CHURCH POLICY AND CURRENT LAW

32. In a letter to all Bishops’ Conferences and leaders of religious orders dated 2 February 2014 the Pope wrote: “Families need to know that the church is making every effort to protect their children. They should also know that they have every right to turn to the church with full confidence, for it is a safe and secure home.”

33. At a meeting of bishops from around the world who were gathering in Philadelphia for the Vatican-sponsored “World Meeting on Families” on 25 September 2015 the Pope said: “The crimes and sins of sexual abuse of minors cannot be kept secret any longer.” (National Catholic Reporter, 27 September 2015)

34. A controversial statement was made by Monsignor Tony Anarella, at a training course for new bishops, also in September 2015, and a training manual was presented to new bishops in February 2016, which reportedly stated "According to the state of civil laws of each country where reporting is obligatory, it is not necessarily the duty of the bishop to report suspects to authorities, the police or state prosecutors in the moment when they are made aware of crimes or sinful deeds" (Cruxnow.com, 15 February 2016).

35. This was contradicted by Cardinal Sean O’Malley, the head of the Pontifical Commission for the Protection of Minors, who said: “We, the president and the members of the commission, wish to affirm that our obligations under civil law must certainly be followed, but even
beyond these civil requirements, we all have a moral and ethical responsibility to report suspected abuse to the civil authorities who are charged with protecting our society" (Official Vatican Network, 16 February 2016).

36. Vatican commentators suggested recently that nothing has been done nine months after the Pope's most radical proposal so far, published in a communique in June 2015, which said he and his nine cardinal advisers had unanimously agreed to create a new judicial section within the Congregation for the Doctrine of the Faith to handle "abuse of office" cases against bishops accused of failing to protect their flocks from paedophiles. The Congregation of the Doctrine of the Faith are reported to have no knowledge of this (Cathnews, 18 March, 2016).

37. In 2014 the Pope refused to respond to requests by the UN Committee on Children’s Rights to enforce mandatory reporting in all churches stating that "The Holy See does not have the capacity or legal obligation to impose the abovementioned principles upon the local Catholic churches and institutions present on the territory of other States and whose activities abide with national laws. The Holy See, in accordance with the rules of international law, is aware that attempting to implement the CRC in the territory of other States could constitute a violation of the principle of non-interference in the internal affairs of States (Vatican Radio, 26 September 2014).

38. No amendments have been made to Canon Law, which directly prohibits external reporting of child sexual abuse through more than eight different provisions including the "Pontifical Secret" (Instruction of the Holy Office, 20th February 1867, No. 14). This situation has remained unchanged despite the numerous positive statements of Pope Francis.

40. The effect of the provisions are that, if anyone has information which suggests a child is being, or has been, sexually abused by a "cleric", they may remain silent. If the information is reported to the bishop, the bishop has to report the information to the Congregation of the Doctrine of the Faith. The bishop has authority to deal with the matter and the Congregation can ratify his decisions.

41. The information and process is "covered by the Pontifical Secret" (Art 30 Norms on "Delicta Graviora") and all "cardinals, bishops, prelates above, major and minor officials, consultants, experts and staff of lower rank, who address the issue" are bound to keep that information as a strict secret (Art II (1) of Secreta Continere (the Pontifical Secret)).

42. The "Pontifical Secret", like matters dealt with in the confessional, is protected from disclosure by a permanent silence.

DEVELOPMENT OF REPORT

CANON LAW

43. The following summary of the historical development of the Canon Law shows shifts and changes in approach, however, it must be emphasised that the Canon Law regarding the secrecy attached to the sexual abuse of children by clergy has remained absolute and permanent.

44. Whilst we will concentrate on the current Canon Law provisions, affecting child sexual abuse by clerics, we consider it necessary to briefly refer to some history as we feel this approach both helps us to understand how the current Law was developed and also gives us an
insight into the failure of Bishops to prevent the sexual abuse of children over many generations. This latter point would also be relevant to the consideration of child sexual abuse in Catholic institutions by the Royal Commission.

45. The starting point for our analysis of Canon Law on this topic is The Code of Canon Law promulgated by Pope Benedict XV in 1917 and amended by Pope John Paul II in 1983. The historical narrative described in the following paragraphs, including references to specific provisions of Canon Law, include extracts taken from a document prepared by the Vatican's Congregation for the Doctrine of the Faith in 2010.

46. This document gives an historical introduction to laws governing child sexual abuse and other grave crimes up to and including 2001, designated as The Norms Of The Motu Proprio "Sacramentorum Sanctitatis Tutela" (2001). The 2010 document asserts that the "text of the Norms on delicta graviora currently in force is the text approved by the Holy Father Benedict XVI on 21 May 2010". This text is in two parts headed "Substantive Norms" and Procedural Norms" and is available on the official Vatican website.

1917

47. The 1917 Canon Law was codified and Code of Canon Law) recognised the existence of a number of “delicts" or canonical crimes that were reserved for judgement by the Sacred Congregation of the Holy Office (Can. 1555 CIC 1917).

48. Serious crimes relating to sexual abuse of prepubescent children were included under these grave crimes by way of an instruction issued by Pope Benedict XV on Crimen Sollicitationis and Crimen Pessum in 1922. According to the 2010 document issued by the Congregation for the Doctrine of the Faith (supra), the 1922 Instruction was given as needed to Bishops who
had to deal with particular cases involving the sexual abuse of children. It is apparent that little or no changes were made to Canon Law in this area between 1922 and 1983.

49. However it should be noted here that the instruction “Crimen Sollicitationis” imposed as a “secret of the Holy Office”, a “permanent silence” on all information the church obtained in relation to the investigation of clerical sexual abuse of children.

50. Furthermore, the Continere Secreta, the Code of Canon Law, as well as the General Regulations for the Roman Curia all make reference to secret archives in which all documents regarding these matters must be kept (Can 489, 490 and 1719).

1962

51. In 1962, Pope John XXIII issued the Instruction On the Manner of Proceeding in Causes involving the Crime of Solicitation which sets out detailed processes for dealing with certain grave crimes including:

52. Solicitation "which occurs whenever a priest - whether in the act itself of sacramental confession, ... - has attempted to solicit or provoke a penitent, whosoever he or she may be, to immoral or indecent acts, whether by words, signs, nods, touch or a written message, to be read either at that time or afterwards, or he has impudently dared to have improper and indecent conversations or interactions with that person" (Art 1), (which had a thirty day statute of limitations period following which disclosure could result in excommunication of the victim), and

53. Crimen pessimum ["the foulest crime"] being... any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way whatsoever with a person of his own sex (Art 71) ... any external obscene act, gravely sinful, perpetrated or attempted by a cleric
in any way with pre-adolescent children [impuberes] of either sex or with brute animals (bestialitas)” (Art 73).

54. The obligation on bishops was and still is “to ensure that causes of this sort henceforth be introduced, treated and concluded as quickly as possible before their own tribunal” (Art 2).

55. Although the bishops are to be the judge in these matters, or appoint suitable alternates, superiors when they discover such crimes are not obliged to disclose the crime to the bishop and they are not prevented, “from being able and obliged to exercise vigilance over him; to admonish and correct him, also by means of salutary penances; and, if need be, to remove him from any ministry whatsoever. They will also be able to transfer him to another place, unless the local Ordinary has forbidden it inasmuch as a complaint has already been received and an investigation begun” (Art 4).

56. The document covers the process for investigation, examination of witnesses and the penalties for guilty priests including wording for confession of the crimes and scripts for absolution for them. These are not the focus of this report although we submit they contribute greatly to the perpetuation of abuse. Our focus is on the rules pertaining to secrecy, which have been reproduced in the current law.

57. The Pontifical Secret imposed in 1962 and applicable today, is as follows:

“11. Since, however, in dealing with these causes, more than usual care and concern must be shown that they be treated with the utmost confidentiality, and that, once decided and the decision executed, they are covered by permanent silence (Instruction of the Holy Office, 20 February 1867, No. 14), all those persons in any way associated with the tribunal, or knowledgeable of these matters by reason of their office, are bound to observe inviolably the strictest confidentiality, commonly
known as the secret of the Holy Office, in all things and with all persons, under pain of incurring automatic excommunication, ipso facto and undeclared, reserved to the sole person of the Supreme Pontiff, excluding even the Sacred Penitentiary. Ordinaries are bound by this same law, that is, in virtue of their own office; other personnel are bound in virtue of the oath which they are always to swear before assuming their duties; and, finally, those delegated, questioned or informed [outside the tribunal], are bound in virtue of the precept to be imposed on them in the letters of delegation, inquiry or information, with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The oath mentioned above, whose formula is found in the Appendix of this Instruction (Form A), is to be taken - once for all by those who are appointed habitually, but each and every time by those who are deputed only for a single item of business or cause - in the presence of the Ordinary or his delegate, on the Holy Gospels of God (including priests) and not in any other way, together with an additional promise faithfully to carry out their duties; the aforementioned excommunication does not, however, extend to the latter. Care must be taken by those presiding over these causes that no one, including the tribunal personnel, comes to knowledge of matters except to the extent that their role or task necessarily demands it.

13. The oath to maintain confidentiality must always be taken in these causes, also by the accusers or complainants and the witnesses. These persons, however, are subject to no censure, unless they were expressly warned of this in the proceedings of accusation, deposition or questioning. The Defendant is to be most gravely admonished that he too must maintain confidentiality with respect to all persons, apart
from his advocate, under the penalty of suspension a divinis, to be incurred ipso facto in the event of a violation."

58. The Oath sworn to by all involved including the victims was (and still is) as follows:

![Formula A]

**THE FORMULA FOR TAKING AN OATH TO EXERCISE ONE'S OFFICE FAITHFULLY AND TO OBSERVE THE SECRET OF THE HOLY OFFICE**

*In the name of the Lord.*

...appearing before...and touching the most holy Gospels of God placed before me, swear and promise to exercise my duty faithfully...Likewise, under the pain of excommunication late sentencing ipso facto and to be incurred without any declaration, from which outside of the moment of death, I can be absolved by no one except by the Holy Father, excluding even the Cardinal of the Penitentiary, and, under other most serious penalties, at the disposition of the Supreme Pontiff to be inflicted upon me in the case of transgression, I promise sacrally, vow and swear, to observe inviolably the secret in all matters and details which will take place in exercising the aforesaid duty, excepting precisely those matters at the end and at the completion of this negotiation [or of these negotiations] which can be legitimately published. Further, I shall observe this secret absolutely and in every way with all who have no legitimate part in the treatment of this same matter [or, who are not constrained by the same sworn bond]; nor [will I ever], directly or indirectly, by means of a nod, or of a word, by writing, or in any other way and under whatever type of pretext, even for the most urgent and most serious cause [even] for the purpose of a greater good, commit anything against this fidelity to the secret, unless a particular faculty or dispensation has been expressly given to me by the Supreme Pontiff.

59. A copy of the document including the Formulae was published on the **CBS News website** and is referred to in a 2003 article by John Allen Jr. in the **National Catholic Reporter**.

60. The full text of the Instruction published without inclusion of the Formulae is available on the Vatican website.
1965-1983

61. According to the 2010 document, although the 1922 instruction remained in force, the period between 1965 and 1983, the year the new Code of Canon Law appeared, was "marked by differing trends in approaches to canonical penal law and the need for a de-centralized approach to cases, with the emphasis on both the authority and discretion of the local Bishops." It was reported that some (bishops) "regarded the canonical processes as anachronistic" and "a "pastoral attitude" to misconduct was preferred." It was also recorded "that a "therapeutic model" often prevailed in dealing with clerical misconduct, with the Bishop being expected to "heal" rather than "punish". The document prepared by the Congregation for the Doctrine of the Faith did concede, however, that an over optimistic idea of the benefits of psychological therapy guided many decisions concerning religious personnel, sometimes without adequate regard for the possibility of recidivism".

62. The Code of Canon Law promulgated by Pope John Paul II in 1983 updated the whole discipline but did not repeal the 1962 norms. This new Code provided that sexual abuse of a minor below the age of 16 years was to be punished with just penalties, not excluding dismissal from the clerical state, if the case so warrants. (Can. 1395 (2)). According to the 1983 code, canonical trials were to be held in the dioceses and appeals from judicial sentences could be presented to the Roman Rota, whereas administrative recourses against penal decrees were to be presented to the Congregation for the Clergy.

1992

63. The "General Regulations of the Roman Curia" were promulgated and approved by Pope John Paul II on 4 February 1992 in accordance with Art 37 of The Apostolic Constitution, Pastor Bonus, of 1988. These

16
regulations do not change the norms but impose the Pontifical Secret on all who are members of the Curia and any employed by them.

1994

64. Following the disclosure of widespread sexual abuse, a special dispensation was made to the Bishops of United States in 1994 increasing the age for the canonical crime of sexual abuse of a minor to 18 years of age. The statute of limitations period was extended to 10 years from the 18th birthday of the victim. Bishops were reminded to conduct canonical trials in their dioceses with appeals continuing to be heard by the Roman Rota and administrative recourses heard by the Congregation for the Doctrine of the Faith.

1996

65. Similar changes were made specifically for the Bishops of Ireland in 1996 also following a commission of enquiry and the disclosure of widespread sexual abuse.

2001

66. The 2010 document records that, around this period, the question of special procedures for sexual abuse cases was under discussion in the Roman Curia and, finally, in 2001 Pope John Paul II decided to include the sexual abuse of a minor under 18 years of age by a cleric, among the list of canonical delicts reserved to the Congregation for the Doctrine of the Faith. This new inclusion was promulgated in the Norms of The Motu Proprio “Sacramentorum Sanctitatis Tutela” (2001) on 30 April 2001. A Letter informing all Roman Catholic Bishops of the new law and new procedures was sent in May 2001. Also sent were special procedural Norms.
regarding the determination and imposition of canonical sanctions.

2010 and Current

67. The norms governing the handling of child sexual abuse cases, which are currently in force, were issued in the text of the Norms on Delicta Graviora approved by Pope Benedict XVI on 21 May 2010.

68. It is worth reflecting on why Pope John Paul II found it necessary to enact new legislation in 2001. Cardinal William Levada gave an informative explanation for this, on 23 November 2011. In a paper he prepared titled: “Considerations on the Delicta Graviora” he explained there were two principal factors calling for the change. Firstly, there were a growing number of reports of child sexual abuse by clerics, especially in the last two decades of the 20th century and, secondly, it was apparent there was a certain lack of clarity about how to handle these cases in the light of the (1983) Code of Canon Law.

69. Father Federico Lombardi explained the Vatican’s revised procedures for handling sexual abuse cases involving priests in an article entitled: Sexual Abuse, The New Norms “On the Most Serious Offences” on 15 July 2010. He explained that these changes allow the church to deal with such abuse more rapidly and effectively.

70. Some of the key changes, according to Father Lombardi, are as follows:

- To streamline and simplify the procedures and make them more effective, and to take account of new problems.

- The vast public echo this latter kind of crime (child sexual abuse) has had over recent years has attracted great attention and generated
intense debate on the norms and procedures applied by the Church to judge and punish such acts.

- Providing us with an official and updated legal text that is valid for the whole Church.

- Among the novelties introduced ... measures intended to accelerate procedures, such as the possibility of not following the "judicial process" but proceeding by "extrajudicial decree"

- The possibility of having not only priests but also lay persons as members of the tribunal staff, or as lawyers or prosecutors.

- An increase of the statute of limitations from ten years to twenty years, with the possibility of extension even beyond that period.

- Another significant aspect is establishing parity between the abuse of mentally disabled people and that of minors,

- The introduction of a new category: paedophile pornography. This is defined as: "the acquisition, possession or disclosure" by a member of the clergy, "in any way and by any means, of pornographic images of minors under the age of fourteen".

71. Significantly, the norms that did not change, according to Father Lombardi, are as follows:

- "Regulations concerning the secrecy of trials are maintained, in order to safeguard the dignity of all the people involved.

- One point that remains untouched, though it has often been the subject of discussion in
recent times, concerns collaboration with the civil authorities.

- This means that in the practice suggested by the Congregation for the Doctrine of the Faith it is necessary to comply with the requirements of law in the various countries, and to do so in good time, not during or subsequent to the canonical trial.

72. The new law, contained in the revised norms, maintains the imposition of "Pontifical Secret" as set out above, on the church's judicial handling of child sexual abuse by priests. It also retains the previous norms set out in 1962.

73. Father Lombardi commented that the doctrinal congregation was studying how to help bishops around the world formulate local guidelines on sexual abuse in Church environments. He added that this study would be "another crucial step on the church's journey as she translates into permanent practice and continuous awareness the fruits of the teachings and ideas that have matured over the course of painful events of the 'crisis' engendered by sexual abuse by members of the clergy."

CHURCH RESPONSE TO SEXUAL ABUSE OF MINORS

74. On 23 November 2011, Cardinal William Lavada gave a comprehensive explanation of the new norms contained in "Delicta Graviora". Included in this was a detailed discussion around the church response to sexual abuse of minors and, because of its relevance to this report, we record some of that material as follows: Cardinal Lavada reported that the Congregation for the Doctrine of the Faith sent a circular letter, approved by the Pope, to all the conferences of Bishops around the world asking them to develop national guidelines to assist the Bishops to formulate a policy to allow the Catholic faithful, the public at large, and civil authorities
to become aware of the appropriate response of Church authorities to the challenges posed by the phenomenon of sexual abuse by clergy.

75. The circular letter introduced its purpose in the following words. "Among the important responsibilities of the Diocesan Bishop in his task of assuring the common good of the faithful, and especially the protection of children and of the young, is the duty he has to give an appropriate response to the cases of sexual abuse of minors by clerics in his diocese. Such a response entails the development of procedures suitable for assisting the victims of such abuse, and also for educating the ecclesial community concerning the protection of minors. A response will also make provision for the implementation of the appropriate (applicable) Canon Law and, at the same time, allow for the requirements of civil law."

76. Having traced through a general history of Canon Law relating to the treatment of child sexual abuse by clergy, using authoritative comments and explanations for this purpose, it is already clear that the church, over nearly a 100 year period, has had a preoccupation with introducing Canon Law provisions, Norms and Instructions which protect the church and the accused from "scandal" and "ill repute" before its obligation to protect children. If we need a recent example to highlight this point, we again refer to Cardinal Lavada's comments in talking about grave crimes such as the sexual abuse of minors, on 23 November 2011. He talked about the relationship between the bishop and his priests and the fundamental attitude to be shown by the bishop. He described this in terms of bringing the priest back to safety, to walk with him and restore him to the integrity of his personal and ministerial life. He added that, at the same time, the bishop has a duty to protect and be a good shepherd. This includes "protecting the faithful from exposure and scandal".

77. Cardinal Lavada also spoke about the responses of the church. He suggested they should include
opportunities for conversion and reconciliation, they may include therapy and it may also be necessary in some cases to take disciplinary measures aimed at correcting and resolving the problem of priests, for their own good and for the good of the church. Under the heading “The Canonical Discipline of Priests”, he made the following statement "The response of the church cannot rule out the possibility of disciplinary measures in those cases which require such action. Such measures will seek to safeguard the common good without ignoring the good of the individual: in this context the salvation of souls must always be the supreme law (cf CIC can.1752)."

CURRENT PROVISIONS RELATING TO CHILD SEXUAL ABUSE

78. The current canonical laws that govern matters of child sexual abuse are contained in the Norms on Delicta Graviora published in 2010.

79. They prescribe that the following crimes are “reserved for the Congregation of the Doctrine of the Faith” meaning they have to be reported to the Congregation:

80. “Art 6 § 1. The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

1. the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

2. the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology;
3. A cleric who commits the delicts mentioned above in § 1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition”.

81. The reporting requirements apply only to the bishops and are only to “communicate the matter to the Congregation of the Doctrine of the Faith”, not to the civil authorities and not to anyone else:

“Whenver the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further, with due regard, however, for the right to appeal, if the case warrants, against a sentence of the first instance only to the Supreme Tribunal of this same Congregation” (Art 16).

82. The 1962 Norms are not repealed and will still apply in as far as they do not contradict the current norms:

“In these cases, together with the prescripts of these norms, by which all Tribunals of the Latin Church and Eastern Catholic Churches are bound, the canons concerning delicts and penalties as well as the canons concerning the penal process of each Code also must be applied” (Art 31).

83. This means that before the report reaches the bishop, who is now obliged to communicate it to the Congregation, the superiors still have the power without reporting to civil authorities or even to church authorities:

“to admonish and correct him, also by means of salutary penances; and, if need be, to remove him from
any ministry whatsoever. They will also be able to transfer him to another place, unless the local Ordinary has forbidden it inasmuch as a complaint has already been received and an investigation begun” (Art 4 of the 1962 provisions).

84. In cases that do come to the attention of the “Ordinary or Hierarch” other than reporting the matter to the Congregation of the Doctrine of the Faith, all the options for judicial as well as extra-judicial processes and penalties as set out in the 1962 Norms remain applicable.

SECRECY PROVISIONS AND THE PONTIFICAL SECRET

85. The Pontifical Secret is expressly invoked in matters of child sexual abuse by Art 30 of the Norms on Delicta Graviora.

“Art 30 § 1. Cases of this nature are subject to the pontifical secret.  
§ 2. Whoever has violated the secret, whether deliberately (ex dolo) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher turnus at the insistence of the injured party or even ex officio”.

86. The Pontifical Secret is constituted by the "Secreta Continere", which follows the Instruction of Holy Office of 1867 and was promulgated by Pope Paul VI and published by the Secretary of State on 3 February 1974.

87. It provides for perpetual secrecy to be maintained by anyone who has knowledge or information about matters covered by the Pontifical Secret. No official English translation was found. The Google English translation is available here from the Spanish version.

88. The Pontifical Secret is further invoked in “General Regulations of the Roman Curia” promulgated and

89. The General Regulations provide for an “Oath of Fidelity and Secrecy” (Appendix II) sworn to by all members of the Roman Curia.

90. The General Regulations also provide for a “Promise of Secrecy” (Appendix III) sworn to by anyone delegated by members of the Roman Curia (Art 6(2)) as follows: “I...promise before God to be faithful to the Supreme Pontiff and his legitimate successors and strictly observe the professional secrecy: I promise to diligently fulfil all my duties and observe the orders that I will be given by my superiors” Appendix III of the General Regulations.

91. In addition the General Regulations refer to the “Duties of Staff” in Title VI and in reference to both clergy and lay employees Art 38 provides that they are “obliged to strictly observe professional secrecy. They cannot therefore give to those who do not have the right, information about acts or reports of which they have knowledge by reason of their work.”


93. The penalty for “violation of professional secrecy” is “suspension from office” in accordance with Art 69 of the General Regulations.

94. The penalty for “violation of the Pontifical Secret” is “dismissal from office” in accordance with Art 38(2) of the General Regulations.
ADDITIONAL SECRECY PROVISIONS

95. Art 31 of the 2010 Norms reinforce the applicability of all other Norms, General Regulations and Canons which include the following relating to secrecy:

96. Secrecy in matters of “gravity” binding anyone who provides Counsel” in the performance of a juridical act.

Can 127(3) “All whose consent or counsel is required (to a juridical act) are obliged to offer their opinion sincerely and, if the gravity of the affair requires it, to observe secrecy diligently; moreover, the superior can insist upon this obligation.”

97. Secrecy binding anyone who holds office in the Diocese

Can. 471 “All those who are admitted to offices in the curia must:
promise to fulfill their function faithfully
according to the manner determined by law or by the bishop
observe secrecy within the limits and according to the manner determined by law or by the bishop.”

98. Secrecy to ensure that “the good name of anyone is not endangered” Can 1717(2)

Can. 1717 §1. “Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous

§2. Care must be taken so that the good name of anyone is not endangered from this investigation.
§3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later."

99. Secrecy provided for by “the special norms for cases which pertain to the public good” Can 1728 (1)

Can. 1728 §1. "Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed".

100. Secrecy in cases that “will endanger the reputation of others” Can 1455(3)

Can. 1455 §1. "Judges and tribunal personnel are always bound to observe secrecy of office in a penal trial, as well as in a contentious trial if the revelation of some procedural act could bring disadvantage to the parties.

§2. They are also always bound to observe secrecy concerning the discussion among the judges in a collegiate tribunal before the sentence is passed and concerning the various votes and opinions expressed there, without prejudice to the prescript of ⇒ can. 1609, §4.

§3. Whenever the nature of the case or the proofs is such that disclosure of the acts or proofs will endanger the reputation of others, provide opportunity for discord, or give rise to scandal or some other disadvantage, the judge can bind the witnesses, the experts, the parties, and their advocates or procurators by oath to observe secrecy".
101. Secrecy for those who “fear that from their own testimony ill repute...will befall them” Can. 1548 s 1 (2)

Can. 1548(1). “When the judge questions witnesses legitimately, they must tell the truth.

§2. Without prejudice to the prescript of Can. 1550 (2), n. 2, the following are exempted from the obligation to respond:
1/ clerics regarding what has been made known to them by reason of sacred ministry; civil officials, physicians, midwives, advocates, notaries, and others bound by professional secrecy even by reason of having given advice, regarding those matters subject to this secrecy;
2/ those who fear that from their own testimony ill repute, dangerous hardships, or other grave evils will befall them, their spouses, or persons related to them by consanguinity or affinity”.

SECRET ARCHIVES

102. The Canon also provides for a special secret archive to be kept by the bishop where all documents relating to these matters have to be kept. The provisions are as follows:

Can 489 s 1 In the diocesan curia there is also to be a secret archive, or at least in the common archive there is to be a safe or cabinet, completely closed and locked, which cannot be removed; in it documents to be kept secret are to be protected most securely.

Can 489 s 2 Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemmatory sentence, are to be destroyed. A brief summary of what occurred along with
the text of the definitive sentence is to be retained.

Can 490 s 1 Only the Bishop is to have the key to the secret archive."

103. The Canon also provides that the documents relating to these matters should be kept in these secret archives. This is as follows:

Can 1719 "The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process."

MANDATORY REPORTING REQUIREMENTS

104. None of the changes in the 2010 Norms provide for reporting to civil authorities whether by the superiors, the bishops or the Congregation of the Doctrine of the Faith.

105. It is therefore only the law of the country that will oblige members of the church to report abuse and these laws are not sufficient, neither in Australia, nor in most countries in the world.

106. It is necessary to briefly discuss the mandatory reporting requirements of suspected child sexual abuse, both in an Australian context and worldwide. This is important for two reasons. Firstly, in Australia, priests and religious are not included in any of the "classes" of persons required to report child sexual abuse. Secondly, there is a clear disconnect between the comments made by senior church officials and the Canon Law itself as far as priests and bishops reporting child sexual abuse is concerned.
107. The Canon Law as set out above clearly imposes a duty of secrecy on anyone who has knowledge of an act for a bishop to report to the Congregation of the Doctrine of the Faith. There is no obligation whatsoever to report to the authorities unless the civil law compels it.

108. In Australia, the mandatory reporting requirements across Australia differ widely from state to state. They differ in terms of: “who must report?”, “what must be reported?” and the legal provisions applicable. With regard to “who must report?”, this is usually prescribed in terms of classes of persons such as doctors, nurses, teachers, and police officers, etc. However, it is important to note that, in none of the states, is the “class” of priests or religious included. There may be situations where a priest or religious might fall into another “class”, such as “teachers” but these would be a clear minority. It is reasonable for us to proceed in this report on the basis that clerics are not, currently, required to report suspected cases of child sexual abuse in Australia. Nor are they required to obtain “Blue Cards” or Australian Federal Police checks notwithstanding the fact that children are exposed to them.

109. It is not proposed to deal at length with “what must be reported?” or the legal provisions involved but a few brief comments are apposite. The content of what has to be reported can cater for the circumstances in which the abuse took place, the nature of the abuse, the source of the information, the potential for further risk, both to a particular child and other children, and, even, in the case of New South Wales, any information which might be of material assistance in securing the apprehension, prosecution or conviction of the offender. (Refer Section 316 of the Crimes Act 1900 (NSW)). The importance of these facts are that they serve to demonstrate the need for Australia to have a consistent approach to prescribe what should be reported to police in suspected cases of child sexual abuse.
110. A further complication with current reporting requirements is the myriad of different legal provisions covering the different obligations to report in each state. Without quoting specific statutes, these laws in general terms, include Care and Protection of Children Act, Children and Young People Act, Child Protection Act, Working with Children Act, Crimes Act, Public Health Act, Education Acts, Criminal Codes and the Family Law Act.

111. We understand the different legal requirements in the states of Australia and the complexities that arise from this fact. However we believe the strongest requirements possible should be in place to protect children and these should be uniform across Australia. Uniform mandatory reporting requirements will certainly help to protect children in Australia in the future (the level of their protection should not depend on where they reside) and, as we shall now see, this would reinforce the protection of children in Catholic institutions because of the unsustainable and intractable stance taken by the Vatican up to this point.

THE VATICAN AND REPORTING CHILD SEXUAL ABUSE

112. We now come to a crucial part of this report and we present a picture that, unfortunately yet again, demonstrates the duplicity that permeates through the church. As mentioned previously, Father Federico Lombardi explained, on 15 July 2010, the substantive norms of Delicta Graviora, dealing with the Vatican's revised procedures for handling sexual abuse cases involving priests. The document recording his explanations included the following: "These norms are part of Canon Law; that is, they exclusively concern the church. For this reason they do not deal with the subject of reporting offenders to the civil authorities..." Father Lombardi also is reported as saying that, while the Vatican norms do not directly address the reporting of sex abuse to civil authorities, it remains the Vatican's
policy to encourage bishops to report such crimes wherever required by civil law.

113. The controversy around this issue has continued, at least up until 2016 when a report surfaced that French Monsignor, Tony Anatrella, told bishops in a training course that “bishops had no obligation to report abuse charges to law enforcement”. In responding to this a Commission, led by Cardinal Sean P O’Malley of Boston, made a statement reiterating that Catholic Bishops have a “moral and ethical responsibility” to report suspected abuse to civil authorities (Crux, 15 February 2016).

114. So now we come to the crux of the problem. The concerns of many Catholics may be assuaged by senior church officials like Cardinal O’Malley, and others who express similar views, because they believe his statement represents the current church view and will be applied to protect children. However, as we have clearly demonstrated in this report, this is plainly not true and, moreover, it is dangerous because it leads people to believe that bishops around the world will follow suit. The correct position in the church is that Canon Law prevents, any employees from reporting abuse to anyone other than the bishop, and prevents bishops from reporting suspected abuse to civil authorities unless they are required by the civil law to do so. Bishops who do disclose such abuse will face severe penal sanctions, including excommunication and dismissal by the Pope.

115. A clear example that the church will revert to Canon Law when it is placed under extreme pressure was provided by Pope Benedict XVI in 2010.

116. The Murphy report, released on 26 November 2009, dealt with the horrendous sexual abuse of children in the Dublin Archdiocese of Ireland from 1975 to 2004. The report concluded that: "the Dublin Archdiocese’s preoccupations in dealing with cases of child sexual abuse, at least until the mid-1990’s, were the maintenance of secrecy, the avoidance of scandal, the
protection of the reputation of the church, and the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were subordinated to these priorities" (Report by Commission of Investigation into Catholic Archdiocese of Dublin, 29 November 2009)

117. In responding to the report, Pope Benedict XVI indicated he would send a Pastoral Letter to the Catholic Faithful of Ireland, which he did on 19 March 2010. Included in this letter were the following comments addressed to "my brother bishops": "It cannot be denied that some of you and your predecessors failed, at times grievously, to apply the long-established norms of Canon Law to the crime of child abuse...Besides fully implementing the norms of Canon Law in addressing cases of child abuse, continue to cooperate with the civil authorities in their area of competence. Clearly, religious superiors should do likewise".

118. The former Pope's instruction here to "apply the long established Canon Law" means: maintain secrecy, only respond to requests from civil authorities when legally obliged to, do not report abuse to the civil authorities voluntarily.

119. There can be no doubt the Canon Law will always prevail and, even if cases are properly dealt with in accordance with Canon Law, abusers will not be brought to justice in the criminal justice system and children and parents will not be warned of potential threat of harm.

120. As long as the Pontifical Secret remains part of Canon Law, the abuse of children in Catholic institutions will, forever, be subject to secrecy and silence and, therefore, continue to add to the threatened safety of children. It is in secrecy and silence that this evil flourishes.
CONCLUDING COMMENTS

121. We begin our concluding statements by acknowledging that, for purposes of this report, we are only concerned with the Pontifical Secret as it relates to crimes of sexual abuse by clergy against children. We know that the Pontifical Secret also applies for other serious crimes.

122. Our research demonstrates that, not only is it true that the Pontifical Secret still applies to bishops and other clerics, but it also provides for perpetual secrecy to be maintained by anyone who has knowledge or information about matters covered by the Pontifical Secret, such as child sexual abuse.

123. We have, of course, concentrated in this report on Canon Law that exists today, in relation to provisions that bear on the protection of young children. However, in tracing the Canon Law over nearly a 100-year period, we have witnessed and demonstrated the culture in the church that has, clearly, focussed on the avoidance of scandals, the protection of the reputation of both the church and the accused cleric and the total maintenance of secrecy.

124. Who, in the church, has spoken for the victims during this same period? What we have found, at best, is that the victims were included with the accused among comments such as: “The secrecy provisions safeguard the dignity of all the people involved” (Father Lombardi, 15 July, 2015).

125. One of the consequences of child sexual abuse by a priest is that, in many cases, the priest, effectively, removed God from the life of that child. In all the explanatory memoranda emanating from the church that we have researched, covering the Canon Law over this period, we can find nothing that addresses the dire consequences of child sexual abuse for the child. We believe this applies at the spiritual, moral and physical level.
126. Even in 2011 when Cardinal Lavada discussed the new norms of Canon Law he talked of restoring the offending priest to the integrity of his personal and ministerial life. He talked of protecting the faithful from exposure and scandal and he talked about resolving the problem of priests, for their own good and for the good of the church. He did not discuss the devastating impact on the victims and the church’s responsibility for attending to their healing and restoring God to their lives. In Australia it is true that, in all its submissions to the Royal Commission, the TJHC commits to placing the interests of victims first. However, we have found no evidence of this whatsoever, in any communication explaining the Canon Law.

127. In relation to Canon Law we consider it appropriate to look at what has transpired in the Royal Commission over the past 3 years. We have witnessed numerous bishops and senior clerics give evidence that they did nothing when confronted with the most serious allegations of sexual abuse of children by priests. Reasons given included “they passed it on to superiors”, “they did not know what to do” and “the victim did not ask them to do anything”. There were also general comments made along the lines that as people did not want to talk about sexual matters in those days, they didn’t want to say anything.

128. However, in light of our research into the Canon Law we now know that these bishops and officials were prohibited from communicating this information (not even to parents) or acting on this information because of the existence of the Pontifical Secret. Do the readers of this report not find it unbelievable that, as far as is known to date, not one of the bishops or officials, subject to Canon Law, who gave evidence in the Royal Commission, mentioned the restrictive provisions of the Pontifical Secret? Nor to our knowledge has the TJHC put this forward as a reason for the absolute silence kept over all these years, even though, as we have
demonstrated, the Vatican informed every bishop worldwide of the Pontifical Secret provisions.

129. Whilst examination of culture is important, it is the law, of course, in any society, that determines what actions are taken and, in this case, the law is the Canon Law, and the Norms and Instructions approved by the Pope. We have demonstrated in this report that the current provisions of Canon Law ensure that clergy in Catholic institutions maintain absolute secrecy on all allegations and proceedings relating to child sexual abuse. In addition we have highlighted current Canon Law that prohibits bishops from reporting sexual crimes to civil authorities unless the bishops are required to do so by civil law.

130. The correct legal position is that Canon Law prevents bishops from reporting suspected abuse to civil authorities and, except for countries like America and Ireland, where the Pope has bowed to the pressure of exposure of horrendous abuse and allowed limited reporting, the bishops who do disclose such abuse could face severe penal sanctions, including excommunication and dismissal by the Pope.

131. The final word on this issue is that the Canon Law, and in particular the new substantive and procedural norms for Delicta Graviora which are claimed to strengthen efforts against abusive priests, do not address or authorise bishops to report such crimes. We mentioned earlier that Father Lombardi, in explaining the new norms, said while the Vatican norms do not directly address the reporting of sex abuse to civil authorities, it remains the Vatican’s policy to encourage bishops to report such crimes wherever required by civil law. Having regard to the fact that very few countries in the world require clergy to report sexual abuse of children, and having regard to the history of bishops around the world not having the “courage” to report sexual abuse of children over the past 40 years or so (under the same Canon Law which existed then, and still exists today), it is absolutely clear that the
current Vatican policy continues to place children at risk of harm.

132. To conclude, there can be no doubt that it was the secrecy and silence surrounding the sexual abuse by clergy that facilitated the opportunity to abuse in the first place, that allowed it to flourish to epic level, that permitted the bishops in Australia and around the world to hide the abuse by moving offending priests and religious from one place to another and, finally, it was this secrecy and silence imposed on the victims themselves which resulted in a life of devastation and, as we now know, in many cases, suicides.

133. The church knows the inclusion of sexual abuse by clerics in the Pontifical Secret provisions and the formal refusal to allow clergy to report abuse, under Canon Law, are huge factors behind the abuse and scale of abuse. Pope Francis has all but conceded this by his statements and yet, he has done nothing to change the laws.

134. We call on him, as the representative of Jesus Christ on earth, to do so immediately. At the same time the bishops in Australia must immediately take up the call by Cardinal O’Malley and instruct Australian bishops to report sexual abuse until such time that the Royal Commission in Australia can bring about, through its recommendations to government, the inclusion of clergy in the class of persons required to report sexual abuse of children.

SUMMARY OF RECOMMENDATIONS

135. That Australian Bishops acknowledge that time is of the essence for this abomination within the church to be addressed fully by the Pope;

136. That Australian Bishops demand that Pope Francis acts to repeal all and any secrecy laws applying to sexual abuse of children;
137. That Australian Bishops must call on the Vatican to enact Canon Law that provides for all reports of sexual abuse in the church to be immediately reported to the civil authorities;

138. That in the interim, Australian Bishops accept responsibility to do two things, namely:

139. To inform every member of the Australian Catholic Church, as well as parents and guardians of children attending Catholic institutions, that the church has laws and regulations in force which persist in maintaining secrecy regarding child sexual abuse and which ensure allegations of sexual abuse against children may be kept secret.

140. To make a public commitment to mandatory reporting of sexual abuse of children in all Catholic institutions, irrespective of the reporting requirements which currently exist throughout the various states in Australia.

141. That the Royal Commission consider the material provided in this report, and:

142. Confirm that one of the causes of both the acts of child sexual abuse and the scale of the abuse in the Catholic Church were the laws that existed in Canon Law that shrouded the abuse of children in secrecy and silence.

143. Recommend that the Australian Government introduce a national, uniform regime for mandatory reporting of sexual abuse of children. The legislation for such a regime should include clergy and religious and should, specifically, override any moral, ethical or Canon Law around secrecy.

144. That Truth, Justice and Healing Council (TJHC), publically addresses the matter of Canon Law and secrecy.
145. That the TJHC confirms that these laws around secrecy are still in place and ensures that parishes and congregations are educated and informed, specifically from the altars of the churches, of the relevant content of Canon Law and its implications.

146. That the media educate the public to the risks that Canon Law poses to children in Catholic institutions.