

Catholic priests and the mandatory reporting of child 'sexual abuse: should admissions made in the Confessional have to be reported?

What they said...

'The seal of confession...is in the area of the sacred ... politicians can change the law but we can't change the nature of the confessional'

Bishop Greg O'Kelly, the Acting Archbishop of Adelaide

'Well, from my experience and what I've done and the damage that I've done, I'd say yes definitely'

Gerald Francis Ridsdale, a laicised Catholic priest, convicted of sexual abuse and indecent assault against 65 children, giving his opinion on whether abuse admitted during confession should be reported

The controversy at a glance On June 7, 2017, it was reported that the Australian Capital Territory is expanding its reportable conduct scheme regarding child abuse to include information obtained as part of church services, which will include Catholic Confession. The new laws will require religious organisations' 'activities, facilities, programs or services' to report allegations, offences or convictions related to children to the ACT Ombudsman within 30 days and will come into effect from March 31, 2019. [↗](#)

Archbishop Christopher Prowse of Canberra and Goulburn immediately criticised the change as likely to be ineffectual in reducing child abuse and as a threat to religious freedom. [↗](#)

On June 14, 2018, it was reported that as of October 1, 2018, changes will also come into effect in South Australia's mandatory reporting laws which will require priests to report information regarding child abuse obtained during Confession.

Federal Attorney-General, Christian Porter, urged all states and territories to follow South Australia's lead as part of the response to the Royal Commission into Institutional Responses to Child Sexual Abuse. [↗](#)

Bishop Greg O'Kelly, the Acting Archbishop of Adelaide, denounced the new laws indicating that priests would adhere to their religious obligations not the demands of the state. [↗](#)

On June 19, 2018, the Tasmanian government joined those indicating they would be supporting the Royal Commission's recommendation on Confession. [↗](#)

On June 22, 2018, the New South Wales government announced its response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. This did not include requiring priests to reveal information obtained in Confession. The Confession proposal is one of fourteen of the Commission's recommendations being held over for further consideration by the New South Wales government. [↗](#)

On July 1, 2018, the Western Australian government released its 'in principle' acceptance of the Commission's recommendations on reporting sexual abuse of children revealed during Confession. [↗](#)

In response to these developments, on July 4, 2018, a group of 600 Catholic priests from all states and territories came together to declare their determination to defend the seal of Confession. [↗](#)

Victoria, Queensland and the Northern Territory have yet to announce their response to the recommendation.

Background

The Royal Commission into Institutional Responses to Child Sexual Abuse was established in 2013 by the Australian government to inquire into and report upon responses by institutions to instances and allegations of child sexual abuse in Australia.

The establishment of the commission followed revelations of child abusers being moved from place to place instead of their abuse and crimes being reported. There were also revelations that adults failed to try to stop further acts of child abuse.

The commission examined the history of abuse in educational institutions, religious groups, sporting organisations, state institutions and youth organisations.

The final report of the commission was made public on 15 December 2017. [🔗](#)

Recommendations from the Royal Commission to State and Territory governments that affect the status of confession [🔗](#)

Recommendation 7.3

State and territory governments should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, state and territory governments should also include the following groups of individuals as mandatory reporters in every jurisdiction:

- a. out-of-home care workers (excluding foster and kinship/relative carers)
- b. youth justice workers
- c. early childhood workers
- d. registered psychologists and school counsellors
- e. people in religious ministry.

Recommendation 7.4

Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.

Some of the Recommendations from the Royal Commission to the Catholic Church [🔗](#)

Recommendation 16.10

The Australian Catholic Bishops Conference should request the Holy See to amend canon law so that the pontifical secret does not apply to any aspect of allegations or canonical disciplinary processes relating to child sexual abuse.

Recommendation 16.12

The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the time limit (prescription) for commencement of canonical actions relating to child sexual abuse. This amendment should apply retrospectively.

Recommendation 16.18

The Australian Catholic Bishops Conference should request the Holy See to consider introducing voluntary celibacy for diocesan clergy.

Recommendation 16.19

All Catholic religious institutes in Australia, in consultation with their international leadership and the Holy See as required, should implement measures to address the risks of harm to children and the potential psychological and sexual dysfunction associated with a celibate rule of religious life. This should include consideration of whether and how existing models of religious life could be modified to facilitate alternative forms of association, shorter terms of celibate commitment, and/or voluntary celibacy (where that is consistent with the form of association that has been chosen).

Recommendation 16.20

In order to promote healthy lives for those who choose to be celibate, the Australian Catholic Bishops Conference and all Catholic religious institutes in Australia should further develop, regularly evaluate and continually improve, their processes for selecting, screening and training of candidates for the clergy and religious life, and their processes of ongoing formation, support and supervision of clergy and religious.

Recommendation 16.26

The Australian Catholic Bishops Conference should consult with the Holy See, and make public any advice received, in order to clarify whether:

- a. information received from a child during the sacrament of reconciliation that they have been sexually abused is covered by the seal of confession
- b. if a person confesses during the sacrament of reconciliation to perpetrating child sexual abuse, absolution can and should be withheld until they report themselves to civil authorities.

Internet information

On June 17, 2018, the ABC published an analysis piece titled 'Priests say they won't break the seal of confession, but what does that mean?' which explains the religious significance of the sacrament of confession and the importance of confidentiality within it.

The full text can be accessed at [🔗](#)

On June 16, 2018, The Sydney Morning Herald published a comment titled 'Church must lift seal of confession to help protect children' by Chrissie Foster, the mother of two daughters sexually abused by a Catholic priest.

(This is slightly different from a comment by the same author published on August 18, 2017, in The Australian.)

The comment argues that the seal of confession has allowed for and prompted the activities of child abusers.

The full text can be accessed at [🔗](#)

On June 9, 2018, the Catholic News Agency published a report titled 'Australian bishop protests law requiring priests to break seal of confession'. The report detailed the opposition of Archbishop Christopher Prowse of Canberra and Goulburn to the recent changes made to the law in the Australian Capital Territory requiring priests to break the seal of the confession.

The full text can be accessed at [🔗](#)

On June 6, 2018, The Canberra Times published an opinion piece by Christopher Prowse, the Catholic Archbishop of Canberra and Goulburn, titled 'Reporting scheme shouldn't ignore Catholic community's concerns'. The comment outline many of the concerns about a loss of religious freedom the archbishop believes are concerning Catholics.

The full text can be accessed at [🔗](#)

On May 23, 2018, The Adelaide Advertiser published a comment by Michelle James titled 'Catholics must break confessional seal'. The opinion piece counters some of the arguments put by Catholic clerics regarding maintaining the seal of the confession and criticises the Catholic Church for not having responded to other recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse.

The full text can be accessed at [🔗](#)

On April 3, 2018, the Greens Justice Spokesperson, David Shoebridge, issued a media release titled 'NSW Government puts religion ahead of children by failing to abolish the secrecy of the confessional' which criticises the New South Wales government for its failure to draft a law which would require Catholic priests in that state to report child sexual abuse revealed during confession.

The full text can be accessed at [🔗](#)

On 15 December 2017, the Royal Commission into Institutional Child Sexual Abuse released its Final Report Recommendations which included changes to secular law which would extend mandatory reporting obligations to priests regarding information they had received through the confessional.

The full text can be accessed at [🔗](#)

On December 13, 2017, a comment titled 'The Seal of the Confession: resorting to the Age of Christendom', which examines, from the perspective of one Catholic layman, the need to reform various aspects of church doctrine, was published on John Menadue's Internet site 'Pearls and Irritations'

The full text can be accessed at [🔗](#)

On November 10, 2017, a fact sheet was released detailing a recommendation made by the Royal Commission into Institutional Responses to Child Sexual Abuse. The fact sheet explains the Commission's recommendation that a new offence be established titled 'Failure to report offence'.

The offence would be committed by any person in an institutional setting who 'fails to report to police in circumstances where they know, suspect, or should have suspected that an adult associated with the institution was sexually abusing or had sexually abused a child.'

The full text can be accessed at [🔗](#)

On September 9, 2017, The Australian published an opinion piece by Gerard Henderson titled 'Sanctity of confessional early test of religious freedom'. Henderson argues that there is no clear casual connection between the seal of the confession and the sexual abuse of children within the Catholic Church.

The full text can be accessed at [🔗](#)

On August 18, 2017, The Australian published a comment by Chrissie Foster titled 'Evil hid behind handy seal of confession'

In the opinion piece, Foster, the mother of two daughter sexually abused by a Catholic priest, gives detailed evidence of the harmful effects of the seal of confession.

The full text can be accessed at [🔗](#)

On August 16, 2017, The Guardian published a comment by Joanna Moorhead, titled 'Even for child abusers, confessional confidentiality is sacrosanct' The opinion piece explains the centrality of the seal of confession in offering the possibility of contrition and reconciliation to wrongdoers.

The full text can be accessed at [🔗](#)

On August 16, 2017, the British National Secular Society published a comment by Keith Porteous Wood titled 'The confessional shouldn't shield child abuse from reporting'

The opinion piece gives an overview of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse and includes instances of British child abusers who were protected by the seal of the confession.



On August 16, 2017, The Catholic Weekly published an article titled ' Archbishop Anthony Fisher defends Seal of Confession' which details the arguments put by the archbishop supporting the secrecy of the confessional.

The full text can be accessed at [🔗](#)

On August 14, 2017, ABC News published an analysis titled 'Breaking the seal of confession could pit church against state' The analysis considers some of the implications for relations between the Catholic Church and state and federal governments of some of the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse.



On December 4, 2016, Eureka Street published a comment by Father Frank Brennan titled 'Why the seal of the confessional should remain intact'

Father Brennan details why the seal of the confession should not be broken, drawing on theological considerations and his own experience as a priest.

The full text can be accessed at [🔗](#)

On November 14, 2012, The Conversation published a comment titled ' Children's rights versus freedom of religion: the sanctity of the confessional seal' by Sarah Joseph, director of the Castan Centre for Human Rights Law, Monash University.

Joseph looks at the debate surrounding the seal of the confession from the perspective of two sets of conflicting rights and ultimately argues that children's right to protection should prevail.

The full text can be accessed at [🔗](#)

On July 11, 2014, The Conversation published a comment by Renae Barker, lecturer in Law, University of Western Australia, titled 'Anglican shift on confessions puts abuse victims' interests first'. The opinion piece details approvingly the decision taken by the Anglican Church of Australia to extend the grounds under which the seal of the confession can be broken to include receiving information about child abuse.

The full text can be accessed at [🔗](#)

On July 11, 2014, The Catholic Herald published a news report titled 'Priest could be jailed for refusing to break seal of Confession' The article examines a ruling by the Louisiana Supreme Court attempting to compel a priest to reveal evidence regarding sexual abuse that had been made available during confession.



On July 8, 2014, The Courier Mail published a comment by Alison Coates titled 'Anglican Church votes to let priests break seal of the confessional to prevent child abuse but up to dioceses to adopt policy' Coates explained her support for the decision taken by the Anglican Church of Australia.

The full text can be accessed at [🔗](#)

On July 3, 2014, ABC News published a report titled 'Anglican priests to have option of disclosing confessions on serious crimes'

The report details the decision taken by the general synod of the Anglican Church of Australia to allow priests who receive information regarding child sexual abuse during confession to report it to authorities.

The full text can be accessed at [🔗](#)

In 2000, Father William Saunders, writing for the Arlington Catholic Herald, explained the theological significance of the seal of the confession.

The full text can be accessed at [🔗](#)

Arguments in favour of the mandatory reporting of admissions made in the Confessional

1. Churches are not outside the operation of the laws of the State

Australia has no established Church. This means that under the Australian Constitution there is no provision for the State to give a favoured position to a particular religion. No religion in Australia is the official religion of the country and all religions within the country are meant to be treated equally.

Section 116 of the Australian Constitution provides that: 'The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.'

However, this does not mean, as some commentators have suggested, that there is a legal separation between Church and State and that Australian governments cannot make laws that affect religious institutions. The state does interact with religion. For example, the federal government funds schools run by religious organisations and recognises marriages conducted by religious celebrants. [🔗](#)

However, though Australian law theoretically governs the churches in this country, religious organisations have been given a number of exemptions from the operation of some Australian laws. For example, in the area of legal protection against discrimination, in most Australian states, religious schools have the capacity to discriminate in their employment practices on the basis of whether a potential employee accords with the religious ethos of the school. This is counter to the anti-discrimination laws that are in place across the country. [🔗](#)

However, church agencies and schools are not exempt from anti-discrimination law in New South Wales and Tasmania. [🔗](#) Where it operates, this capacity to discriminate has been specifically written into a particular law; it is not an intrinsic feature of Australia's constitutionally determined relationship to the different churches. The default position is that Australian law applies to all groups irrespective of religious affiliation. [🔗](#)

There is increasing pressure to remove legal exemptions historically granted churches in Australia. For example, it was announced in February, 2018, that survivors of sexual abuse will soon be able to sue churches in Victoria, as the State Government moves to close a legal loophole. Currently, laws in the state prevent victims from being able to take legal action against some non-incorporated organisations, like churches.

Attorney-General Martin Pakula said the new legislation, which was passed in May, was in response to a key recommendation from the Royal Commission into Institutional Responses to Child Sexual Abuse.

Under previous laws, a church could not be sued because it does not legally exist as its assets are held in a trust. This is known as the 'Ellis defence'. Courts will now have the power to appoint trustees to be sued if those institutions fail to nominate an entity with assets and allow the assets of the trust to be used to satisfy the claim. Similar laws are in train in New South Wales. [🔗](#)

2. Religious freedom is not absolute

Those who argue that the Seal of the Confession should be restricted claim that the right to practise religion is an important freedom but not one that overrides all others.

Peter Johnstone, a committed Catholic and a member of Catholics for Renewal, who gave public evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse has stated, 'It is fundamentally important to uphold the right of a person to freely practise their

religion in accordance with their beliefs. But that right is not absolute. No society can afford simply to allow religions to demand exemption from laws made for the good of society...' [↗](#)

Peter Johnstone has further noted, 'The International Covenant on Civil and Political Rights provides that religious freedom may be the subject of...limitations to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.' [↗](#)

The same point has been made by Sarah Joseph, director of the Castan Centre for Human Rights Law at Monash University, who has stated, '(Religious freedom) is not an absolute right so, for example, it can be limited by laws which are necessary to protect "the fundamental rights and freedoms of others"'. Clearly, many manifestations of religious belief, such as polygamy or female genital mutilation, may be prohibited due to their impacts on the rights of others.' [↗](#)

The Australian federal Parliament's 'Definition and Scope of the Right to Freedom of Religion or Belief' explains the circumstances under which limitations may reasonably be imposed on the individual's freedom to practise religion. Among the grounds it states as sufficient to restrict religious freedom is the need to protect public safety. Public safety is defined as 'protection against danger to the safety of persons, to their life or physical integrity'. [↗](#) Advocates against child abuse argue that this crime is a clear violation of children's right to 'safety' and 'physical integrity'. Any religious practice which could be seen to increase the likelihood or allow the continuation of child abuse should be banned or restricted.

The position of the federal Parliament has been summed up as 'As a practical matter, it is impossible for the legal order to guarantee religious liberty absolutely and without qualification ... Governments have a perfectly legitimate claim to restrict the exercise of religion, both to ensure that the exercise of one religion will not interfere unduly with the exercise of other religions, and to ensure that practice of religion does not inhibit unduly the exercise of other civil liberties.' [↗](#)

3. Abuse has been allowed to continue because of the Seal of Confession

Evidence presented before the Royal Commission into Institutional Responses to Child Sexual Abuse and admissions made by other child abusers have demonstrated that the Seal of the Confession has allowed abuse to continue.

Chrissie Foster, whose two daughters were both sexually abused by a Catholic priest, has drawn attention to abuse that was not stopped because of the Seal of the Confession. Foster has noted, 'In Queensland in October 2003, Catholic priest Michael McArdle pleaded guilty to sexually assaulting generations of children. In a sworn affidavit which he made public, McArdle stated he had confessed to sexually assaulting children 1500 times to 30 different priests over a 25-year period in face-to-face confessions.'

Foster argues, 'It reveals a noxious secret between priests and a paedophile priest which facilitates and enables heinous crimes to continue for decades at the expense of children, their lives and their wellbeing.' [↗](#)


Similar cases of priests continuing to abuse children because perpetrators were shielded by the Seal of the Confession have occurred in other countries. In the case of English priest, Father James Robinson, three complaints about Robinson were made by a boy to three separate priests in confessionals between 1972 and 1973. These complaints were not acted on. It was not until 2010 that Robinson was finally jailed for 21 years after decades of abuse. [↗](#)

Gerald Francis Ridsdale, a laicised Australian Catholic priest, was convicted between 1993 and 2017 of sexual abuse and indecent assault against 65 children some aged as young as four years. Ridsdale agreed with the Royal Commission into Institutional Responses to Child Sexual Abuse that 'from my experience and what I've done and the damage that I've done' the confessor should tell the police if someone had confessed to a crime. [↗](#)


Peter Johnstone, a committed Catholic and a member of Catholics for Renewal, who gave public evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse, has paraphrased the Commission's position: 'The Commission heard evidence of a number of instances where disclosures of child sexual abuse were made in Confession, by both victims

and perpetrators. The Commission found that Confession is a forum where Catholic children have disclosed their sexual abuse, and where clergy have disclosed their abusive behaviour... The Commission heard evidence that perpetrators who confessed to sexually abusing children went on to reoffend...'


Johnstone has urged, 'The evils of clerical child sexual abuse exposed by the Royal Commission require fundamental reforms of Church governance and culture, including canon law provisions, especially the seal of confession.'


The Royal Commission's recommendation is necessary in the interests of the safety of our children; it is clearly proper that any person with knowledge of a predator at large should bring that person to the attention of the police.' 


4. Confession may psychologically encourage some abusers in their pattern of abuse
Critics of the role of Confession have argued that in some cases it may actually have psychologically encouraged child abusers in their behaviour.


The Royal Commission into Institutional Responses to Child Sexual Abuse said in their summary statement, 'We are satisfied that confession is a forum...where clergy have disclosed their abusive behaviour in order to deal with their own guilt. We heard evidence that perpetrators who confessed to sexually abusing children went on to reoffend and seek forgiveness again.' 


Chrissie Foster, the mother of two daughters sexually abused by a priest, has suggested that the relief from guilt offered by absolution may actually act as an opportunity for child abusers to continue to offend. Foster has highlighted the case of former Queensland Catholic priest, Michael Joseph McArdle, who was jailed for six years for child abuse perpetrated over a period of 25 years.

In his affidavit McArdle stated about his crimes: 'I was devastated after the assaults, every one of them. So distressed would I become that I would attend confessions weekly.' After each confession he said, 'It was like a magic wand had been waved over me.' 

In an opinion piece written the year before, Foster commented on the effect of this absolution. She stated, 'The confessional forgiveness gave him a clean slate that allowed him, within the week, to reoffend - a cycle that lasted for several decades.' 


Foster concluded, 'If McArdle had not been forgiven perhaps his guilt would have compelled him to get help or surrender himself to police... Confession totally aided and abetted McArdle in prolonging his unspeakable sexual crimes against the most defenceless - children.' 

The same point has been made by Sarah Joseph, director of the Castan Centre for Human Rights Law at Monash University, who has stated, 'The availability of religious absolution for such despicable crimes has exacerbated the institutionalisation of the problem by providing an easy way out for the perpetrator's conscience.' 

A study published in Psychology Today in November 2013 suggested that rituals of cleansing and absolution do not necessarily provoke improved behaviour. The author stated, 'Awareness of moral transgression prompted individuals to seek physical cleansing; but once (symbolically) cleansed, individuals were actually less motivated to behave altruistically. This suggests that rituals of absolution may make people feel better, but they don't make people behave better.' 

5. The Anglican Church has limited the Seal of the Confessional

Those who argue that the Catholic Church should remove the Seal of Confession from child abusers note that the Anglican Church has already done so.

Historically, the Anglican Church has pledged not to reveal to civil authorities crimes admitted in Confession. The 1989 Anglican Canon Concerning Confession states, 'If any person confess his or her secret and hidden sins to an ordained minister for the unburdening of conscience and to receive spiritual consolation and ease of mind, such minister shall not at any time reveal or make known any crime or offence or sin so confessed...without the consent of that person.' 

Despite this 1989 ruling and a similar prior Canon of 1603, the Anglican Church does not treat

the confidentiality of Confession as absolute. For example, a 17th century minister who heard a confession of treason was not required to keep that confession confidential. [↗](#)

In March, 2016, the Doctrine Commission of the Anglican Church of Australia noted, 'This single exception (in regard to treason) is very important, because it establishes both that confidentiality is of the utmost importance, and also that exceptions could be made under extraordinary circumstances.' [↗](#)

Anglican acceptance that exceptions can be made to the confidentiality of Confession has allowed the Anglican Church of Australia to modify its doctrinal position. The Anglican Church now allows its ministers the freedom to report to the police child abusers who admit their crime in confession.

On July 3, 2014, it was reported that the Anglican Church had shifted its position on the confidentiality of Confession. The general synod had voted for a change to cover serious crimes, such as child abuse. The synod decided it would be up to individual dioceses to adopt the policy. [↗](#)

The Anglican Archbishop of Adelaide, Jeffrey Driver, stated, 'In matters where lives and genuine wellbeing of people is at risk, the Church has decided that a priest may disclose [but] it's not saying a priest must disclose...' [↗](#)

Critics have wondered where the Catholic Church might be willing to take a lead from the Anglican Church. Theological writer, Alison Coates, has asked, '(Will) the Roman Catholic Church...also see that what was good theology in 1215 may not be so useful, or even moral, 800 years later?' [↗](#)

Arguments against the mandatory reporting of admissions made in the Confessional

1. The Catholic Church regards the Seal of the Confession as unbreakable

Confession (also known as Penance or Reconciliation) is a sacrament within the Catholic Church. Catholics believe it has profound spiritual significance. The Latin word sacramentum means 'a sign of the sacred'. The seven sacraments are believed to be special occasions for experiencing the saving presence of God. Theologically they are signs and instruments of God's grace. [↗](#)

During Confession a Catholic confesses misdeeds (sins) committed against either others or God. If sincere regret (contrition) is expressed, the priest will cleanse the spiritual burden of guilt attached to the sins confessed. This is referred to as absolution.

It is a fundamental doctrine of the Catholic Church that a priest must abide by the Seal of the Confession. This means that whatever is confessed is not divulged outside the Confession.

Canon 983.1 of the Code of Canon Law states, '...It is a crime (within the Church) for a confessor...to betray a penitent by word or in any other manner or for any reason.' [↗](#)

A priest, therefore, cannot break the seal to save his own life, to protect his good name, to refute a false accusation, to save the life of another, to aid the course of justice (like reporting a crime), or to avert a public calamity.

In 1682, a Decree from the Holy Office issued under the full authority of the Pope mandated that confessors are forbidden to make any use of the knowledge obtained in the confession that would 'displease' the person who made the confession or reveal his or her identity. [↗](#)

This absolute confidentiality is to ensure that the penitent (the person making the confession) feels free to reveal whatever sins s/he has committed and so can be absolved of them. Trust is seen as fundamental to the operation of this sacrament. A priest who broke the Seal of the Confession would be excommunicated, that is, barred from the sacraments and services of the Catholic Church. Therefore, his own spiritual life would be imperilled.

2. Challenging the Seal of the Confession is an attack on freedom of religion

Any challenge to the Seal of the Confession could be regarded as an attack on freedom of religion within Australia.

On September 7, 2017, The Australian published a comment by Gerard Henderson who stated that 'Right now the only threat to religious freedom in Australia turns on the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse concerning the sacrament of confession.' [↗](#)

Archbishop Denis Hart, President of the Australian Catholic Bishops Conference, had previously stated, "Confession in the Catholic Church is a spiritual encounter with God through the priest. It is a fundamental part of the freedom of religion, and it is recognised in the Law of Australia and many other countries. It must remain so here in Australia..."

Australia has always recognised the freedom of the Christian Churches and other serious faiths to practise their sacraments and other rituals unimpeded. I believe we should continue to give people of faith that space.' [↗](#)

Sarah Joseph, director of the Castan Centre for Human Rights Law at Monash University has noted, 'Freedom of religion is recognised under Article 18 of the International Covenant on Civil and Political Rights, to which Australia is a party.' Joseph has further noted, 'The imposition of a duty on Catholic priests to reveal communications imparted during confession raises different human rights issues... The breaking of that seal would force Catholic priests to act against their fundamental religious beliefs..' [↗](#)

Following the Australian Capital Territory's decision to require Catholic priests to report sexual abuse admitted in Confession, Andrew Wall, a member of the Australian Capital Territory Legislative Assembly, said forcing priests to break the Seal of Confession 'significantly impinges on an individual's freedom of association, freedom of expression and freedom of religious rights.' [↗](#)

Christopher Prowse, the Catholic Archbishop of Canberra and Goulburn also challenged the new law as a threat to freedom of religion. He stated, 'This legislation...threatens something ... very important to Catholics and to other people who have a religious belief - our religious freedom. Religious freedom is the freedom to hold a belief and, secondly, the freedom to manifest belief in community and in public, privately and individually in worship, observance, practice and teaching.

The government threatens religious freedom by appointing itself an expert on religious practices and by attempting to change the sacrament of confession while delivering no improvement in the safety of children.' [↗](#)

3. In Australia Church and State are regarded as separate

There is no government-sanctioned or -endorsed religion within Australia. Section 116 of the Australian Constitution states that the Commonwealth 'shall not make any law for establishing any religion'. [↗](#) This is similar to the United States where the First Amendment to the United States Constitution states that Congress 'shall make no law respecting an establishment of religion'. In the United States this has been understood to mean that there will be no State support of any religion or any religious activity, thus, for example, prayers are not allowed to be said in any government-funded school in the United States and no religion receives any government funding.

In Australia, the constitutional guarantee against 'establishment' has been given a more limited reading. The High Court of Australia has found that the point of section 116 of the Constitution is merely to prevent the Commonwealth from passing laws that are intended to establish a state religion, such as the Anglican Church in England, which has special privileges and is also subject to state control in certain matters. [↗](#)


Some religious and legal commentators have read this as meaning that no Australian Government can prescribe to any religion in Australia what its beliefs and practices will be. On December 14, 2016, Eureka Street published a comment by Father Frank Brennan in which he stated, 'Given the separation of church and state, the royal commission is not in a position to prescribe changes to church teaching, discipline or structures.' [↗](#)

Whatever the legal justification for this interpretation of the separation of Church and State, Catholics are likely to see the two as having separate jurisdictions. Further, priests are particularly likely to give precedence to Church law over State law.

Melbourne's Archbishop Denis Hart, the president of the Australian Catholic Bishops Conference said in 2011, 'I have no hesitation in stating that priests will guard the sanctity of the seal of confession with their very lives. They would certainly undergo imprisonment rather than violate it.' Similarly, Father Frank Brennan stated in December, 2016, 'If a law is introduced to say that a priest should reveal a confession, I'm one of those priests who will disobey the law.'




This refusal to follow the law of the state when it comes into conflict with religious doctrine has already occurred in the United States. In 2008, Louisiana's Supreme Court ruled that a priest be compelled to testify as to what he heard in the confessional concerning an abuse case. The priest concerned in the particular case in regard to which the ruling was made stated, 'The seal of Confession is one that can never be broken... As a priest I cannot even say someone has come to Confession, let alone divulge the contents of what was revealed.'

The Baton Rouge diocese, in its own statement, said the Louisiana Supreme Court had violated the Establishment Clause of the First Amendment to the United State Constitution in its decision. 


4. The Catholic Church has previously been given mandatory reporting exemptions similar to those given some other professions

Those who argue that priests should not be required to break the Seal of the Confessional note that they have previously been given reporting exemptions and that other professions are given a similar 'privileged' status.

'Privilege' is a legal principle protecting what is communicated between certain groups of people from having to be revealed to a court or in response to a law. It applies, for example, to communications between a lawyer and a client or between a doctor and a patient. Information is regarded as 'privileged' if it derives from a relationship that is judged to be of great value and which would not be able to continue if this information were not confidential. 

After the establishment of the federal Royal Commission into Institutional Responses to Child Sexual Abuse, the Catholic Church established its Truth, Justice and Healing Council to respond to the Commission. The Council has argued that the Seal of the Confessional should remain privileged under state law, that is, given a mandatory reporting exemption. In a statement published on December 8, 2016, the Council referred to the previous exemptions given under Victorian law to information gained during Confession.

In 2012, the Protecting Victoria's Vulnerable Children Inquiry recommended, 'An exemption for information received during the rite of confession should be made ' in any case where a priest confessor might otherwise be required to report suspected child abuse.

Then Victorian Premier Ted Baillieu ruled out changes to the seal of the confessional. He said members of the Inquiry 'all concluded that the sanctity of the confessional should remain. I think that's a powerful argument.' 

The Inquiry's report stated, 'A statutory exemption to the reporting duty should be provided in relation to information received during a religious confession. In Victoria, information revealed during religious confessions is considered privileged when admitting evidence before courts.'



The Truth, Justice and Healing Council cited the later mandatory reporting laws introduced by the Victorian Government in 2014 making it an offence for an adult to fail to disclose to Victoria Police information about a potential child sex offender or abuse. The Council noted, 'When this change was made the new law [again] included an exemption for information that is communicated on an occasion of "privilege".' As the law currently stands in Victoria, information revealed during Confession is privileged. Francis Sullivan, chief executive officer of the Catholic

Church's Truth, Justice and Healing Council has urged that the precedent set by the Victorian Government continue to be adhered to. [↗](#)

5. Removing the Seal of the Confessional will not reduce child abuse

Many defenders of the Seal of the Confessional argue that its removal would not assist in the detection of child abusers.

On July 23, 2012, Eureka Street published the following comment made by Father Frank Brennan: 'The seal of the confessional is a red herring when it comes to protecting vulnerable children. Usually when hearing a confession, a priest will have no way of identifying a victim. He will have no idea of the date of any offence; it may have occurred decades ago. He will have no idea of where any offence was committed...He more than likely will not even know the identity of the penitent; he might not even get to see him or her behind the confessional veil.' [↗](#)

Father Brennan further stated, 'If the only information available were from the confessional, chances are that it will be information which is useless to police or child protection officers. If confessional reporting were mandatory, chances are that the perpetrator would simply not come to confession. So even in brute consequentialist terms, there is no point in making confession reportable to the state.' [↗](#)

The Catholic Church has argued that very few sexual abusers confess their sins at Confession. Christopher Prowse, the Archbishop of Canberra and Goulburn has stated, 'People who attend confession are sorry for their sins, indicate resolve not to sin again and seek God's mercy. Paedophiles carry out evil and unspeakable criminal acts. They hide their crimes; they do not self-report.' [↗](#)

Prowse has further argued that were the Seal of the Confession removed from child abusers the likelihood of their confessing to such crimes would become even more remote.

The Archbishop has stated, 'What sexual abuser would confess to a priest if they thought they would be reported? If the seal is removed, the remote possibility that they would confess and so could be counselled to report is gone.' [↗](#)

The same point has been made by Father Frank Brennan who has stated, 'All I can say is that in 32 years no one has ever come to me and confessed anything like that. And instituting such a law, I say, simply reduces rather than increases the prospect that anyone ever will come and confess that to me.' [↗](#)

Brennan has further argued that this concentration on the Seal of the Confession is a misdirection of popular and legal attention. It is not a significant contributor to the Catholic Church's failure to address child abuse and both governments and the Church would be better to look elsewhere for solutions. Brennan has stated, 'Kids will be better protected in future if we put to one side the furphy about the seal of the confessional and address the real questions about uniform mandatory reporting and clear guidelines for reporting any suspected serious crime.' [↗](#)

In an opinion piece published in The Australian on September 9, 2017, Gerard Henderson argued, 'It is not at all clear that there is a causal relationship between the sacrament of confession and the offending of some Catholic male clergy, primarily against boys. According to the royal commission's own statistics, on a proportionate basis there was a higher level of paedophilia in the Uniting Church (including its predecessors) than in the Catholic Church between 1950 and 2015. Yet the Uniting Church has no sacrament of confession.' [↗](#)

Further implications

Already half of Australia's states and territories have accepted the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse to require priests to report child sexual abuse admitted during Confession.

This will pose no significant problem for the Anglican Church in Australia. In 2014, Australia's Anglican Church altered its position on the confidentiality of Confession. The general synod

voted for a change to cover serious crimes, such as child abuse, admitted to during Confession. The change gave ministers the freedom to report what they had been told to civil authorities. The synod decided it would be up to individual dioceses to decide whether or not they adopted the new policy. Ultimately, responsibility for what action he or she takes will rest with each Anglican minister in Australia. [↗](#)

Shortly later the Church of England debated whether it would follow the lead of the Anglican Church of Australia and similarly allow ministers to report what they had heard in Confession. As of July, 2018, no agreement had been reached. [↗](#)

What this demonstrates is the decentralised nature of Anglicanism. There is no overall controlling body. There are nearly 40 independent Anglican national churches, none of which has authority over any other. There is no Parliament or Congress. There is certainly a Church of England. But there is also the Church of Wales, the Church of Ireland, and the Scottish Episcopal Church, none of which is governed by the Church of England. The Anglican church was originally spread to other countries through English colonization. As the colonies became independent from England, so did their churches. There is a structure for doctrinal centralization, but in the absence of central authority the doctrine is followed by consensus and not by mandate. [↗](#)

There is significant theological and doctrinal divergence within the Anglican Communion. Since World War II, for example, most but not all provinces have approved the ordination of women. More recently, some jurisdictions have permitted the ordination of people in same-sex relationships and authorise rites for the blessing of same-sex unions. [↗](#)

This diversity means that Anglican churches in particular nations can make rulings that reflect the attitudes of their particular national church. They also allow for individual dioceses to decide on their implementation of national rulings. This doctrinal diversity and flexibility helps to explain the decision taken by the Anglican Church of Australia to relax prohibitions on breaking the seal of the confession.

The far more centralised nature of the Catholic Church makes it much more difficult for doctrinal changes to occur. Most doctrine within the Catholic Church is derived from scripture and endorsed by hundreds of years of tradition. These statements of belief are not amenable to change. Enormous doctrinal authority rests with the Pope; however, he would not make doctrinal rulings that could not be reconciled with scripture and established tradition. The centralised authority of the Pope typically serves to reinforce tradition rather than to challenge it. [↗](#)


There appears no doctrinal room within the Catholic Church to dispute the seal of the confession. The Catholic Catechism in its statements regarding the Sacrament of Penance and Reconciliation says of the secrecy of the sacrament, it 'admits of no exceptions'. [↗](#)

The laws that are being framed in various Australian states and territories requiring priests to notify authorities of child sexual abuse revealed in Confession would have to be sanctioned by the Holy See (the central government of the Catholic Church) if they were to be followed by Catholic priests in Australia. It seems certain that this will not occur. The Royal Commission into Institutional Responses to Child Sexual Abuse seems to have already recognised this.

In its recommendations, the Commission called on states and territories to extend mandatory reporting provisions to include what priests are told during Confession. However, it did not ask Australian bishops to approach the Holy See to request that Canon law be altered to allow some exceptions within the operation of the seal of the confession.

Without doctrinal allowance, these new Australian state and territory laws are unlikely to have very much effect. No priest is likely spontaneously to volunteer information to police or other civil authorities. If questioned, priests will almost certainly refuse to answer. It is hard to see what in real terms these new laws will achieve.

Some critics have argued that unless the Catholic Church in Australia accepts legal liability for the criminal activities of priests and others within its ranks engaged in or supporting sexual

abuse, the exemptions and concessions allowed the Church, such as exemptions from taxation, should be revoked.  The federal government would have to impose such a penalty and is unlikely to do so; however, even its suggestion is an indication of how grim the contest between these two conflicting areas of authority, civil and religious, could become.