

Submission by the Very Reverend Archbishop Mark Coleridge, Archbishop of Brisbane, to the Queensland Parliament's Legal Affairs and Community Safety Committee on the Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019

3 January 2020

SEAL OF THE SACRAMENT

The Catholic Church in Australia is unequivocally committed to the protection of children and therefore to mandatory reporting. We share the desire of this Parliament to make Queensland as safe as possible for our young people. The Catholic Church has made much progress in this area and acknowledge we still have work to do. However, we disagree with the State Government on a fundamental point in respect to this proposed legislation. The mechanism within this legislation which deals with the confessional seal quite simply will not make a difference to the safety of our young people.

The Royal Commission highlighted the terrible crimes committed by some members of the Catholic Church against the victims of child sexual abuse, and once again we express our sorrow and shame for the harm this has done to them and their families. While we share the Royal Commission's determination that the crimes of child abuse never be repeated and commit ourselves to doing everything in our power to ensure this is so, I submit that the State does not need to force a choice to be made between respecting the seal of confession (and thus freedom of religion) and the protection of children and vulnerable adults; both can be achieved through existing practices.

From the outset, it is worth noting the difficulties in finding common ground between lawmakers and the Catholic Church on this theme. The Church approaches the question of the seal of

confession from angles starkly opposed, given that the secular state and Church law proceed from quite different assumptions. This is among the reasons why any real understanding of the sacrament of penance has proven elusive for some commentators.

It may be surprising that I quote a political commentator like Waleed Aly in this submission, but his 2012 reflections offer one of the clearest descriptions of this quandary as he notes a “doctrinal excursion it’s clear we don’t understand”:

Here’s the problem: the whole issue of the confessional seal is a monstrous red herring ... Demanding laws that require priests to break the confessional seal sounds good. It sounds tough, uncompromising, common-sense. But it's also the kind of thing you do when you don't understand the problem you are trying to solve. That's what we are witnessing here: irreligious people trying to address a religious problem with brute secular force. That might make perfect intuitive sense to the staunchly secular mind, but we need more than intuition and declarations of secular supremacy here. What matters is what works. And taking an axe to the confessional box won't work. It might even make things worse.¹

Aly wrote his column before the Royal Commission into Institutional Responses to Child Sexual Abuse looked at the sacrament of penance among its many points of inquiry. The Royal Commission did many positive things for the Catholic Church in Australia. We are a better Church because of its arduous work. However the Royal Commission seemed not to grasp the nature of the sacrament of penance when it handed down its final report.

It is important to note that, in the Church’s understanding, there are various degrees of confidentiality. There is a general sense of confidentiality which applies to many situations in which prudence or charity require that things known not be said or published. There are also the various forms of professional confidentiality, some stricter than others. Medical practitioners, for instance, maintain a confidentiality which is different from the strict confidentiality recognized by legal privilege and claimed by journalists with regard to their sources. Within the Church, there is the confidentiality of what is called the internal forum, referring to the exchanges that take place, for example, in spiritual direction. The confidentiality of the internal forum is strict but not absolute. The Church’s own internal mandatory reporting, and any state-legislated mandatory reporting would apply to matters within the internal forum.

Absolute and inviolable confidentiality applies only to the seal of the sacrament of penance, which in Church law if not quite in pastoral practice applies to the sins confessed in the sacramental celebration and the identity of the penitent. Within pastoral practice, the seal has extended further

¹ Waleed Aly, “Choir of dissent off-key on the sanctity of confession”, *The Age*, 16 November 2012
https://www.smh.com.au/politics/federal/choir-of-dissent-off-key-on-the-sanctity-of-confession-20121115-29enl.html?fbclid=IwAR10kduvOvt7EAgf4jzXCXUx60njxQCK3BqTxF-jTSip7IEUa5_MvK7C2DY

without ever being thought of as applying to everything and anything that may be said in the confessional situation. It is regarded as applying to a penitent who may not confess sin but does mention temptation; it is not regarded as applying to a penitent who confirms the details of a dinner engagement. Looking to the proposed legislation, the Church is not concerned so much about strict professional confidentiality or the internal forum as they might apply to confessors but about the absolute confidentiality of the seal with its narrower application.

The seal derives its meaning from a particular understanding of the sacrament. It is God, not the priest, to whom the penitent comes to confess sin and receive absolution. God, not the priest, is the source of the mercy which the penitent seeks. The priest simply enables and witnesses to the encounter with God which is the true meaning of the sacrament. He speaks the word of absolution not in his own name but “in the name of the Father, the Son and the Holy Spirit”. The seal recognises the right of the sinful human being to approach God in complete freedom; and the seal is the guarantee of that freedom. It enables the penitent to speak openly before God, to stand open and honest before God, to hide nothing from the God who sees all and forgives all. It enables penitents to see themselves with the eye of God. That is the purpose and the healing power of the encounter which is the sacrament’s true meaning.

The encounter is a dialogue, not a monologue. It is a dialogue not between the penitent and the priest but between the penitent and God; and the task of the priest is to enable that dialogue. He may speak words of advice or admonition to the penitent, but in all that he says the priest is expected to speak the word of God; and the word of God is always a word of compassion and truth in defense of the weak and vulnerable.

The proposed legislation would make the priest at this vital point less a servant of God than an agent of the state. Clergy have died because they have refused to submit to the claims of the state and preferred to defend the rights of the penitent before God and the rights of God before the penitent. This legislation is bound to fail in this regard. Again, Waleed Aly writes well on this point:

Canon law prohibits a priest from revealing a confession even under the threat of his own death. Should we expect him to buckle under the threat of a prison sentence? Here it's essential to understand that any priest who violates the confessional seal faces excommunication. That might mean nothing to you. You might even see this as the threat that underpins a dangerous fairy-tale. But you are not the one hearing the confession. What matters is what this means to priests and, in Catholic terms, excommunication is as serious as it gets – far more serious than any prison sentence. This leaves us searching for a very strange creature indeed: someone devoted enough to enter the priesthood, but not devoted enough to care about eternal damnation. And we need lots of them. We're betting on a team of rogue priests. That doesn't sound like a plan to me.²

² Ibid

It is claimed at times that the seal must be abolished in law because it is the linchpin of a culture of secrecy and cover-up in the Catholic Church that has been identified by the Royal Commission. The Church rejects such a claim, insisting that the seal is the guarantee of a culture of true disclosure which is the opposite of cover-up. Its abolition would make it certain that abusers would never speak of the abuse in the sacramental celebration, and any hope there may have been that they might be led to see the truth of their crime, stop the abuse and report to civil authorities would be lost.

However, that is assuming that the sacrament of penance attracts serious criminals who come to confess their sins in the hope of absolution. On 9 February, 2017, the Royal Commission heard from a panel of six experienced priests with a combined history of more than 150 years as pastors. The Royal Commission asked these priests if they had ever had someone confess a crime during the sacrament of penance. They told the Royal Commission that this had never happened. There are publicised examples of convicted priests claiming that they confessed their child abuse regularly. However, it must be noted that someone can confess very generally (for instance, "I broke the Sixth Commandment", without providing further detail). Perhaps former priests who have been found guilty of child abuse should not be so readily believed by media when they claim to have confessed their abuse when much of their life has been a lie.

In the end, the proposed legislation would be unworkable, based as it is upon a poor knowledge of how the sacrament actually works in practice. Many penitents choose to remain anonymous, as is their right. What would it mean for a priest to report an anonymous abuser to authorities? Or an abuser who confesses may do so only in generic terms which leave the actual abuse undeclared and the priest is unlikely to cross-examine the penitent in such a situation. It is different with a child who mentions abuse in the sacramental celebration: an experienced and sensitive confessor would be able to invite the child to speak outside the sacrament either to him or to someone else (e.g. a teacher) and take the matter further from there. Mandatory reporting would apply in such a situation, as would the Church's own internal mandatory reporting.

Without the seal, the sacrament of penance would be no more than a spiritualised counselling session, which is what the proposed legislation seems to think it is. The legislation therefore runs the risk of forbidding the celebration of the sacrament itself. The state would effectively be saying that there is some sin that cannot be forgiven, that God has no part to play in this, that clergy should be agents of the state, that the sacrament of penance is outlawed.

If this is so, then the proposed legislation raises major questions about religious freedom. It will limit and unjustly interfere with the human right to which Roman Catholics and others are entitled to enjoy in practicing their faith by accessing the sacrament of penance according to the Church's own discipline. Human rights must be balanced one against others. The right to religious freedom stands in harmony with the right of a child to be safe. The two rights are not opposed; they must be balanced. But this proposed legislation does not get the balance right; it disturbs the harmony. A right balance would require that a strong and effective regime of mandatory reporting be put in

place but that the privilege of confession be left intact not as some questionable exemption but as part of that regime when there is no evidence that the legislation is workable.

Proposals to remove legal protections for the seal of confession have, at their heart, the laudable aim of safeguarding children and vulnerable adults. However, safeguarding can be achieved while respecting the seal of confession. The two are not mutually exclusive. Indeed, removing legal protections around the seal of confession would not only be ineffective, it would be counter-productive, because it would remove the very small chance that a perpetrator might seek out confession as a first step to taking responsibility for their actions.

It is not the intention of this proposed legislation which troubles the Catholic Church and others but its unintended, indeed counter-productive effects. History is strewn with examples of laws which sought to do one thing and ended up doing the opposite. The Catholic Church hopes that this will not be another example.