

# POSITION STATEMENT



**Bravehearts**  
Educate Empower Protect  
Our Kids

## The Seal of the Confessional

An indisputable fact around the prevalence of child sexual assault and exploitation in our communities is the silence and secrecy that permeates how we respond to sexual harm against our children. One of the greatest challenges for organisations seeking to address concerns of child sexual assault is the need to understand and overcome the silence, secrecy and shame that surrounds this crime.

The sacrosanct position of the confession within the Catholic Church has historically, and continues to, ensure that sexual crimes against children that are confessed continue to be covered up by the Church. If we are to successfully confront the issue of child sexual assault, challenging the culturally and historically entrenched response of secrecy and silence to child sexual assault is imperative.

Child sexual assault strongly relies on silence; in order to keep offending perpetrators need secrecy. Within organisations this can operate at two levels, (1) silencing of victims and (2) silence within the organisation.

Bravehearts strongly believes that the continued positioning, by the Catholic Church, of the sanctity of the confessional above the protection of children and young people is indefensible.

The *Royal Commission into Institutional Responses to Child Sexual Abuse* has strongly recommended (in both the Criminal Justice Report and the Final Report) that the existing protection and privilege in relation to religious confession be abolished and that any information or concerns relating to the protection of children from sexual harm be subject to mandatory reporting laws. Bravehearts fully supports this position.

### TRADITIONS AND RELIGIOUS INSTITUTIONS

In relation to the Catholic Church, 37.5 of *Towards Healing* (January 2016) recognises the need to observe State and Territory laws regarding the knowledge of a criminal offence.

37.5 Church personnel who are required by law to report suspected child abuse shall conscientiously comply with their obligations. State or Territory law regarding the reporting of knowledge of a criminal offence must also be observed. The appropriate Church Authority shall also be notified of any such report.

However, the Catholic Church has, over thousands of years upheld the seal of confessional as sacrosanct under Canon Law. The breaking of the seal of confessional is considered so serious by the Catholic Church that for a priest to divulge anything told to them in confession, is a matter for automatic excommunication. For the most part, Australian courts have respected the sanctity of the confessional. This effectively means that the Courts have held Canon Law as superior to Australian laws. This is unacceptable. All Australians must abide by the same laws equally, without discrimination or excuse.

## THE NEED FOR LEGISLATIVE CHANGE

Certainly with the issue of child protection, secular law should override any Church law and there should be no exemptions. We believe that for most parents, if their child was being sexually assaulted and the offender confessed to a priest or a child disclosed within confession, they would want the authorities to know about it. This is particularly relevant, but not exclusively so, to on-going sexual assault and the prevention of future sexual harm.

The need for the States' Law to be amended to ensure reporting as recommended by the Royal Commission is critical, and Bravehearts fully supports the relevant recommendations made in the Criminal Justice Report and the Final Report, specifically:

### *Criminal Justice Report:*

Recommendation 35: "Each state and territory government should ensure that the legislation it introduces to create the criminal offence of failure to report recommended in recommendation 33 addresses religious confessions as follows: a. The criminal offence of failure to report should apply in relation to knowledge gained or suspicions that are or should have been formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession. (and) b. The legislation should exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective. (and) c. Religious confession should be defined to include a confession about the conduct of a person associated with the institution made by a person to a second person who is in religious ministry in that second person's professional capacity according to the ritual of the church or religious denomination concerned"

### *Final Report:*

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."

## CONSTITUTION AND HUMAN RIGHTS IMPACTS

Those who oppose the proposed changes to law, argue that confession is considered to be a central tenet of Catholicism, as well as other religions, including Judaism, Anglican, Orthodox and Lutheran churches; with Catholic Canon Law stating that: '*The sacramental seal is inviolable; therefore it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason: Can. 983 §1*'.

This antiquated approach is unacceptable when we are discussing the protection of children and young people from sexual assault and the devastating and long term impacts that the crime has, on not just the victim, but their family and often times the community. The need for churches to reform and evolve from this 'tradition', is clear if there is to be a zero tolerance for child sexual assault and no sanctuary for child sex offenders.

Rights to privacy and freedom of religion should not outweigh the protection of children. Religious freedom is recognised under s.116 of the Constitution of Australia and by our courts. However, no rights are absolute. Where there are competing rights it is critical that no argument for religious freedom or rights to privacy should trump the rights of our children and young people to be protected from harm or for the laws of Australia to be set aside.

## **BRAVEHEARTS' POSITION**

Bravehearts strongly believes that we all have a duty to protect children and young people and as such should be required to report suspected or disclosed harm to the authorities who have the knowledge and skills to properly investigate. Research tells us how difficult it is for children to disclose, and although we are making grounds through personal safety programs, it is through mandatory reporting that a proper assessment/investigation can take place, steps can be taken to ensure a child is safe, the harm can be stopped and further harm prevented, the needs of the child can be supported and the perpetrator can be held to account.

We believe that this duty to report and protect children from harm absolutely extends to religious institutions and to the confessional. Bravehearts believes that the reporting obligations of ministers of religion should align with other mandated reporters and there should be no exemption from reporting knowledge or suspicions about child sexual abuse or other child abuse, irrespective of the source of the information on which that knowledge or suspicion is based.



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