



SAFEGUARDING OUR CHILDREN

Can cultural and legislative

change save the Catholic Church?

The Royal Commission into Institutional Responses to Child Sexual Abuse is due to complete its work at the end of 2017. Even before it reports, distressing evidence at public hearings has put a heavy onus of responsibility on the people leading institutions to take steps to prevent abuse and respond quickly and effectively to any new allegations. Frank Brennan is a Jesuit priest and professor of law at the Australian Catholic University. He is also an adjunct professor at the Australian Centre for Christianity and Culture and the Australian National University College of Law, among other roles. Francis Sullivan is CEO of the Truth, Justice and Healing Council, an entity created by the Catholic bishops and religious leaders in Australia to co-ordinate engagement with the Royal Commission. What do we need to do to keep children safe in Catholic institutions?

JULIE MCCROSSIN speaks to Frank Brennan and Francis Sullivan to find out.





rancis Sullivan and Frank Brennan agree on what the Church needs to do to keep children safe. In separate interviews, they each identify three particular priorities as critical to the future of the Catholic Church.

Firstly, that all steps necessary must be taken to ensure children are safe.

“The Catholic Church, like every other institution, needs realistic and rigorous standards for child protection and safeguarding in all their institutions. And these standards, procedures, policies and practices need to be audited, ideally by an outside body, so people are held to account for compliance,” says Sullivan, as we eat lunch on the ground floor of a tower block in the centre of Sydney’s legal district.

Secondly, they both emphasise that allegations of abuse must be referred to police. Brennan confirms this view when we meet at the Australian Catholic University in North Sydney. We spend some time discussing the complex and changing nature of the responsibility to report serious offences under the common law duty of misprision of felony and its legislative replacement.

Brennan’s ultimate message for priests and others in the church is straightforward: “Regardless of the complexity of the common law or the *NSW Crimes Act*, if you have knowledge or belief that there has been some abuse

of a child, that has to be reported to police. Now, the preference is that the victim makes the report. But if they specify that they do not want the matter reported, then there is still an obligation under the church’s own protocol, *Towards Healing*, that the information is to be provided to the police without identifying the complainant.”

Sullivan concurs, saying with intensity, “The days of the Catholic Church investigating itself are definitely over. Our message is quite simple – if you are concerned a child is being abused, the police are to be given the information.”

However, Sullivan also raises the problems that arise if the complainant does not want their name given to police.

“The difficulty we have is that adult survivors of child abuse have a common law right not to have their name given to the police, so we have been engaged in a ‘blind reporting’ process. The police obviously want the name, but our obligation is to the adult survivor, because they have a legal right not to have their name go forward to police.

“It is often quite complex in families as the person may not have told their family about the abuse, or the parents may never have known. Another family member may have been abused, too, but never told anybody. There needs to be really tight protocols around privacy. But, at the same time, the safety of the community is a balancing factor.

“Years ago there was no reporting to police. In some states in Australia there is still no requirement to report to police.”

Brennan and Sullivan share a third view: that the culture of the church must change and this can only be achieved by involving lay people, including women, at all senior levels of decision-making.

“What we have to remember is that the closer we get to Rome, the more the Roman church still looks like an old papal court,” Brennan explains.

“It is a feudal court and it is inhabited by men. Basically, we have to break through that with organisations such as the Pontifical Commission for the Protection of Minors where half the members are women and where most of the members are lay people, ensuring that real authority is being exercised by people who have real expertise.”

Sullivan has a deep knowledge of the culture of the Catholic Church through his role as CEO of the Truth, Justice and Healing Council. While there is no single entity that is the Catholic Church – it is made up of separate authorities, be they a diocese or a religious order – the Council co-ordinates all engagement with the Royal Commission, whether it be presenting a united voice on a policy position, obtaining documents, or providing witnesses in a case study, or providing legal representation.

“A decision needs to be taken as to whether an individual needs separate legal representation. In the first instance, everybody is represented by us, the Council. We brief barristers through our solicitors at Gilbert + Tobin, the firm that works for us in every case.”

Sullivan points out that culture is not changed by policy and practice.

“Policy and practice should ultimately reflect culture,” he says. “When you’ve got a culture that has spawned and created this dysfunctional scandal, getting to the base of the culture problem takes more than a compliance system.”

So what does it take, exactly? According to Sullivan, it requires the capacity to step back as an institution and determine what values drive behaviour in the institution.

“What values actually shape the way the communication of the institution occurs, and what do they prize?” asks Sullivan. “In the Catholic Church, which is still administered through

the residue of the medieval times where hierarchy determines access and determines participation of both males and females, the culture does not encourage co-responsibility, mutuality and participation in decision-making. That, in turn, doesn't encourage transparency and accountability. These are, if you like, the indices through which you'll begin to see whether culture changes.

"Sex abuse is an abuse of power. It is an abuse of privilege. The worst part of the culture is that those in positions of authority chose protecting the institution above protecting children. They chose perpetuation of the system of concealment and cover up rather than exposing the church to transparent analysis."

Frank Brennan has had time recently to think deeply about the Catholic Church and the Royal Commission, as well as other issues, and to write several books. The result is that he published four books in 2015, including *The People's Quest for Leadership in Church and State*.

"Every 10 years I am privileged to have a year at a Jesuit University in the United States. I have just been the visiting professor of law at the Boston College Law School," he explains.

"I'd like to see the Catholic Church in Australia restored to some sort of credibility and relevance, particularly in the wake of what's going on in the Royal Commission. We're spending at least \$400 million over five years to try to get this right, so let's make sure we do get it right. I think that requires a critique from time to time, but it also requires some call within the Catholic community to make sure we are duly responsive to the legitimate demands that are made of us."

How should the church measure the success of its efforts in response to the Royal Commission? "A measure of success will simply be that parents feel secure to bring their children to Catholic schools and parents feel very secure having their children participate in the life of a parish in the Catholic Church," says Brennan. "There's



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got to be systems for training, particularly clergy and religious, and for ensuring complaints are duly investigated.

"There must be a proper working relationship between the church as an institution and state agencies, particularly police forces. We've got to ensure there is a cultural framework where there is reporting of anything a child complains of and it is then for the police authorities to work through those things."

Brennan says there are still big questions as to whether the church understands the situation in terms of the wellbeing of those who are victims and those who are prospective victims. There is a very clerical mindset in the Australian Church, he says, that means men who are celibate and who don't have their own families occupy the main positions of authority and power within the institution.

He points to the work of the British Emeritus Professor of Psychiatry and former President of the British Medical Association, Baroness Sheila Hollins, as an illustration of the way forward. Baroness Hollins is a member of the Pontifical Commission for the Protection of Minors which advises the Pope and she recently visited Australia and participated in a public conversation with Brennan in Sydney.

"Her advice to the cardinals and all Vatican officials, as she told them directly, is, 'All of you should go and see the film *Spotlight*, about *The Boston Globe's* investigation into widespread, systemic child sexual abuse by Catholic priests, and then we can have a conversation,'" recounts Brennan.

"She gave further advice to a British cardinal when he asked her to accompany him to Ireland for the investigation into the church there. She said, 'Yes, I will come, provided you do not attend any meeting at which I am absent'. And she said, 'For a room full of bishops, it was a little arresting for a lay woman to be there with the cardinal. But that is now what is necessary'. That was her message to the cardinals and that would be my message."



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According to Sullivan, there are some key changes to the law that are necessary to keep children safe.

“There was, in some hearings of the Royal Commission, a startling revelation by some that they were not sure that abusing a child was a crime,” he says.

“The reality is it is a crime. Our first submission to the Royal Commission was plain about that. There is no doubt that parliaments will need to reform the current laws so there is absolute clarity about police reporting. Let’s have a national law. We currently don’t have a law that clarifies whether someone is to report if they have a ‘suspicion’, as opposed to a ‘certainty’, about a child being abused.”

Sullivan also believes that in litigation with organisations such as the Catholic Church, there needs to be legislation requiring unincorporated organisations to make available a proper defendant, so people can bring a suit of damages.

“It will need to be backed up by insurance and assets,” he explains. “Now, the trouble with the litigation route is that the hurdles are high, the collection of evidence is difficult, the expense is inhibitive, and the process is traumatic and adversarial.”

The Council, says Sullivan, has made a submission on the compensation issue, on which he says there are two pathways.

“One is the redress reparation pathway.

Our submission says there should be a national independent redress scheme, or, if that can’t be achieved, a nationally consistent set of redress schemes that are state-based,” explains Sullivan.

“The second pathway is the litigation path and our call for a legislative requirement for a nominal defendant backed by insurance and assets. Those cases will be defended. The plaintiff will need to make the case.

“One of the really difficult threshold policy questions, when you put in a redress scheme, will be whether the person, once they’ve gone through the redress process and are satisfied with the reparation package, will they need to sign away their common law rights in a deed of release? Our position is that they need to do that.”

There is one other issue that arises for both Sullivan and Brennan: that the end of the Royal Commission’s work in late 2017 will be the beginning of a much longer process of church transformation to build the systems and culture that will keep children safe, and to try to contribute in some way to healing the victims and their families.

“This whole exercise so far isn’t healing people,” Sullivan says. “Unfortunately, for many people it is a re-traumatising process. For others, it is a scouring set of revelations. Can the church develop legitimate forms of outreach, bearing in mind that most people abused in a church never want to see it again?” **LSJ**



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