

## Vos Estis Lux Mundi: New Procedures for Dealing with Complaints of Sexual Abuse

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Pope Francis published the *motu proprio* “You are the Light of the World” - *Vos Estis Lux Mundi* - on 10 May 2019.<sup>1</sup> It came into force on 1 June 2019 and will be re-evaluated after three years in 2022. The sexual abuse crisis has impacted on the Church for the past few decades and in particular has dogged the papacy of Pope Francis.

This law constitutes Pope Francis’s biggest legal response to the crisis. A *motu proprio* is the most common legislative document a Pope uses, and it means ‘at my own initiative’. *Vos Estis Lux Mundi* outlines the procedures to deal with complaints of sexual abuse or failures of bishops and religious leaders to deal properly with complaints in both canon and civil law.

This *motu proprio* uses the term “sexual acts” rather than “delict against the Sixth Commandment” as in *Sacramentorum Sanctitatis Tutela*.<sup>2</sup> This change makes a significant difference to what crimes are encompassed by the legislation. The term “sexual acts” is in accord with secular legislation in many countries and the terminology of the United Nations. However, “delicts against the Sixth Commandment” is a broader description.

The rescript of Pope Francis dated 3 December 2019 has changed Article 6 of *Sacramentorum Sanctitatis Tutela* so that the crime of child pornography in that document also includes images of minors under the age of eighteen years.<sup>3</sup>

### Sexual abuse

#### *Sacramentorum Sanctitatis Tutela*

In 2001, Pope John Paul II issued the *motu proprio Sacramentorum Sanctitatis Tutela* whereby he promulgated *Norms concerning the more grave delicts reserved to the*

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FRANCIS, *motu proprio, Vos estis lux mundi*, 10 May 2019:

[http://w2.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio-20190507\\_vos-estis-lux-mundi.html](http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html). (=Francis, *Vos estis lux mundi*)

JOHN PAUL II, *motu proprio, Sacramentorum Sanctitatis Tutela* 30 April 2001, promulgating *Norms concerning the more grave delicts reserved to the Congregation for the Doctrine of the Faith*: [http://www.vatican.va/content/john-paul-ii/en/motu\\_proprio/documents/hf\\_jp-ii\\_motu-proprio\\_20020110\\_sacramentorum-sanctitatis-tutela.html](http://www.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_20020110_sacramentorum-sanctitatis-tutela.html).

FRANCIS, rescript, “Some amendments to the *Normae de gravius delictis*”, 3 December 2019: [http://www.vatican.va/roman\\_curia/secretariat\\_state/2019/documents/rc-seg-st-20191203\\_rescriptum\\_en.html](http://www.vatican.va/roman_curia/secretariat_state/2019/documents/rc-seg-st-20191203_rescriptum_en.html)

*Congregation for the Doctrine of the Faith*.<sup>4</sup> The norms were revised in 2010. This legislation already required accountability and transparency from bishops and religious superiors. However, there were no sanctions for Ordinaries failing to act, and the law was not generally enforced. For example, Bishop Geoffrey Jarratt, of Lismore, was testifying to the Royal Commission in Australia on 16 December 2013. Ms Gail Furness asked him “why he had not reported a case to Rome”. He replied he was unaware of the Vatican directive until 2006. When asked how he could ignore the directive, Jarratt said the directive was on file, and he didn’t believe there was “a great consciousness” of it. Then when the chair questioned him further, Jarratt could only agree that it left him open to criticism.<sup>5</sup>

*Sacramentorum Sanctitatis Tutela* Article 16 stated:

Whenever 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.<sup>6</sup>

The Congregation for the Doctrine of the Faith released “Revised Norms on Dealing with Clerical Sex Abuse of Minors and Other Grave Offenses” on 15 July 2010.<sup>7</sup> The new norms were approved *in forma specifica* by Pope Benedict XVI on 21 May 2010.

The Revised Norms broaden the actions encompassed as grave crimes to include abuse of mentally retarded adults and child pornography in article 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 18 years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.<sup>8</sup>

4 CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Sacramentorum Sanctitatis Tutela, Revised Norms on Dealing with Clerical Sex Abuse of Minors and Other Grave Offenses, Origins*, 40 (2010-2011), 146-151. (=CDF, Revised Norms on Dealing with Clerical Sexual Abuse of Minors)

5 CHRIS GILLON and Damian GRACE, *Reckoning: The Catholic Church and Child Sexual Abuse*, Adelaide, ATF Press 2014, 115.

6 [http://www.vatican.va/resources/resources\\_norme\\_en.html](http://www.vatican.va/resources/resources_norme_en.html).

7 CDF, Revised Norms on Dealing with Clerical Sexual Abuse of Minors.

8 Ibid. 148.

*Vos Estis Lux Mundi*

The definition of sexual abuse has been expanded in *Vos Estis Lux Mundi*. The definition of sexual abuse is now:

Art. 1 – Scope of application

§1. These norms apply to reports regarding clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life and concerning:

- a) delicts against the sixth commandment of the Decalogue consisting of:
  - i. forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts;
  - ii. performing sexual acts with a minor or a vulnerable person;
  - iii. the production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions;
- b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in letter a) of this paragraph.<sup>9</sup>

This is the first time that religious brothers and sisters have been explicitly included in documents concerning sexual abuse. There had been debate whether sexual abuse by brothers or sisters is a crime because canon 695<sup>10</sup> did not make that clear, but only said they could be dismissed for the action of sexual abuse. The norms also encompass members of Societies of Apostolic Life such as the Columbans. Priests and deacons of Societies of Apostolic Life were subject to the norms of *Sacramentorum Sanctitatis Tutela*, but their sisters or brothers were not.

<sup>9</sup> FRANCIS, *Vos estis lux mundi*.

<sup>10</sup> Canon 695 §1. A member must be dismissed for the delicts mentioned in canons 1397, 1398, and 1395, unless in the delicts mentioned in can. 1395, §2, the superior decides that dismissal is not completely necessary and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way.  
 §2 In these cases, after the proofs regarding the facts and imputability have been collected, the major superior is to make known the accusation and proofs to the member to be dismissed, giving the member the opportunity for self-defence. All the acts, signed by the major superior and a notary, together with the responses of the member, put in writing and signed by that member, are to be transmitted to the supreme moderator.

Now crimes of sexual abuse by religious brothers and sisters have to be reported to the local Ordinary. This ensures that there is adequate transparency and accountability within the Church.

“Sexual Abuse” includes “forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts.” This is a broad interpretation of what “force” means. By including “abuse of authority” in this description, the cases of people such as Cardinal McCarrick (US) are encompassed. It will be interesting to see how much this authority is interpreted by the Congregation of the Doctrine of the Faith in its decisions dealing with individual cases.

Unfortunately, there will still be cases of so-called consenting adults. For example, a case of a man and a woman having a sexual relationship, then breaking up. Then if the man was ordained, and later resumed the relationship, I think this would still, although morally wrong, constitute a consenting adult relationship.

Any ordained cleric or religious has significant spiritual authority over lay people. If a cleric had a ministerial relationship with a person he has sex with, the cleric would be guilty of sexual abuse because he is abusing his authority. This would mean a sexual relationship between: a bishop and a member of the faithful from his diocese; a priest and a parishioner; a priest-lecturer and a student; a seminary staff member and a seminarian; would all be crimes of sexual abuse.

**Religious Leaders failing to act**

The definition of abuse in *Vos Estis Lux Mundi* article 1 b) also includes religious leaders failing to act.

Article 6 states:

The procedural norms referred to in this title concern the conduct referred to in article 1, carried out by:

- a) Cardinals, Patriarchs, Bishops and Legates of the Roman Pontiff;
- b) clerics who are, or who have been, the pastoral heads of a particular Church or of an entity assimilated to it, Latin or Oriental, including the Personal Ordinariates, for the acts committed *durante munere*;
- c) clerics who are or who have been in the past leaders of a Personal Prelature, for the acts committed *durante munere*;
- d) those who are, or who have been, supreme moderators of Institutes of Consecrated Life or of Societies of Apostolic Life of Pontifical right, as well

as of monasteries *sui iuris*, with respect to the acts committed *durante munere*.<sup>11</sup>

The provisions of articles 1 b), c) and d) are a dramatic change in approach by the Church. It is now a crime for religious leaders to fail to observe civil laws on reporting and failing to cooperate with or obstructing civil investigations. Effectively the Church is canonising civil laws concerning what constitutes sexual abuse and grooming, as well as civil procedural laws concerning this reporting.<sup>12</sup> This has significance in many countries because of laws concerning grooming, obtaining phone numbers of children, photographing children etc.

Also, historic failures of not dealing with complaints are now encompassed by this legislation. The article in 1 b), c) and d) specifically says "who have been in the past leaders," and refers to moderators of institutes of consecrated life societies of apostolic life and monasteries concerning acts or omissions while they were in office.

This law specifies canon 1389 which had already made acts or failures to act crimes, when they constituted an abuse of an office or position:

§1 A person who abuses ecclesiastical power or an office, is to be punished according to the gravity of the act or the omission, not excluding by deprivation of the office, unless a penalty for that abuse is already established by law or precept.

§2 A person who, through culpable negligence, unlawfully and with harm to another, performs or omits an act of ecclesiastical power or ministry or office, is to be punished with a just penalty.<sup>13</sup>

These provisions remove any doubts about the application of this canon concerning sexual abuse cases.

#### Other Definitions

*Vos Estis Lux Mundi* also gives the following significant definitions for vulnerable persons and pornography.

<sup>11</sup> FRANCIS, *Vos estis lux mundi*.

<sup>12</sup> Canon 22. Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise. Translation of canons of the 1983 Code by the Canon Law Society of America, [http://www.vatican.va/archive/ENGLISH104/\\_P4H.HTM](http://www.vatican.va/archive/ENGLISH104/_P4H.HTM), hereafter the translation of the canons of the 1983 Code will be from this source.

<sup>13</sup> In the 1917 Code, canon 2404 "Abuse of ecclesiastical power, in the prudent judgment of the Legitimate Superior, shall be punished according to the gravity of the fault, with due regard for the prescriptions of those canons that establish certain penalties for various abuses." Edward N. PETERS, *The 1917 Pio-Benedictine Code of Canon Law*, (English trans.), San Francisco: Ignatius Press, 2001.

#### Vulnerable Persons

Abuse includes actions with people under age 18 years and also vulnerable persons. Vulnerable persons are defined as "any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence".

At a meeting for the Dicastery for Laity, Family and Life in Rome June 13, 2019, Philip Milligan, the dicastery canon lawyer, insisted that lay groups must understand who is considered a "vulnerable adult" when it comes to sexual abuse.

He pointed out that seemingly "consensual sexual activity between adults can, because of the state of mind or the situation of one of the persons, actually be a situation of sexual abuse."<sup>14</sup> A person with a dependent relationship to a cleric is a vulnerable person. A person being counselled; an employee of the cleric; a parishioner of the priest; a student of the priest; foreign students and new immigrants would come into this category.

#### Pornography

The "Revised Norms on Dealing with Clerical Sex Abuse of Minors and Other Grave Offenses"<sup>15</sup> published on July 15, 2010 and approved *in forma specifica* by Pope Benedict XVI on May 21, 2010 made the use of child pornography a crime:

2° The acquisition, possession or distribution by a cleric of pornographic images of minors under the age of 14 for purposes of sexual gratification, whatever means or using whatever technology.

While clergy using child pornography has been a canonical crime for many years, there was no canonical definition or description. Limiting the crime to abusing those under age 14 years was far too restricted.

According to canon 1329<sup>16</sup> essential co-operators committing a crime incur the same penalty. People buying or using pornography are financing its manufacture. Clergy doing this are equally as guilty as the producers. Also, clergy sexting with those under age 18 have been included in the crime.

<sup>14</sup> Junno ESTEVES, *Purging silence: Vatican expands abuse prevention to lay movements*, 25 June 2019 <https://cruxnow.com/vatican/2019/06/25/purging-silence-vatican-expands-abuse-prevention-to-lay-movements/>.

<sup>15</sup> CDF, Revised Norms on Dealing with Clerical Sexual Abuse of Minors.

<sup>16</sup> Can. 1329 §1. If *ferendae sententiae* penalties are established for the principal perpetrator, those who conspire together to commit a delict and are not expressly named in a law or precept are subject to the same penalties or to others of the same or lesser gravity.

§2. Accomplices who are not named in a law or precept incur a *latae sententiae* penalty attached to a delict if without their assistance the delict would not have been committed, and the penalty is of such a nature that it can affect them; otherwise, they can be punished by *ferendae sententiae* penalties.

In *Vos Estis Lux Mundi* Pope Francis says, "child pornography means: any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes."<sup>17</sup>

This is an all-encompassing description. In jurisprudence a clear distinction is made between accidentally seeing pornography on the internet for example which is not a crime. However, if it is downloaded or copied in any way, a crime has been committed in canon law. Any investigation into an alleged crime concerning pornography must establish whether it was a deliberate act to use or acquire the pornography.

### Prescription

The institution of prescription is different to the statute of limitations of common law,<sup>18</sup> but because of their similarity they are often confused with each another, but it is important to distinguish between the two.

Prescription "is a legal method of extinguishing an action...If the *libellus* is not presented before the terms of prescription expire, the criminal action is extinguished."<sup>19</sup> Austin explains:

In the first place, the canonical institute of prescription must be clearly distinguished from the civil law known in the U.S. as a "statute of limitation." While they bear a certain resemblance to one another, they cannot be simply equated. Specifically, they differ as to the effect they have upon criminal action. In US civil law, "A statute of limitation is regarded as barring, or running against, the remedy to which it applies, and not as extinguishing, or even impairing, the right, obligation or cause of action." Therefore, after the time limit of a statute has expired, the 'civil action itself exists and continues independently of that statute', the US statute does not extinguish it. But this is precisely what the canonical institute of prescription does – it extinguishes the action, whether contentious (civil) or criminal: 'an action is extinguished by prescription' (canon 1492 §1); 'a criminal action is extinguished by prescription' (canon 1362 §1). That is to say, 'when the time period of prescription has run and reached its terminus, the very cause of action itself is extinguished. It no longer exists.'<sup>20</sup>

<sup>17</sup> FRANCIS, *Vos estis lux mundi*.

<sup>18</sup> Cf. David CITO, "La Perdida del estado clerical ex officio ante las actuales urgencias pastorales," in *Ius Canonicum*, 51 (2011), 225-226.

<sup>19</sup> A. BORRAS, "The Cessation of Penalties" Commentary on canon 1362, in Á. MARZO, J. MIRAS and R. RODRIGUEZ-OCANA, (eds.) E. CAPARROS (gen. ed. English language edition) *Exegetical Commentary on the Code of Canon Law*, 5 vols., Montreal: Wilson & Lafleur, 2004, vol. IV/1, 425.

<sup>20</sup> B. T. AUSTIN "Due Process of Law and the USCCB Essential Norms", in *Studia Canonica*, 51 (2017), 70-71.

As Austin explains, prescription extinguishes a criminal action to impose or declare a penalty after the prescription time expires. This means the cause of a criminal action no longer exists.

*Sacramentorum Sanctitatis Tutela* states in Article 7:

§1. A criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the Congregation for the Doctrine of the Faith to derogate from prescription in individual cases.

§2. Prescription runs according to the norm of canon 1362 § 2 of the Code of Canon Law and canon 1152 § 3 of the Code of Canons of the Eastern Churches. However, in the delict mentioned in art. 6 §1 no. 1, prescription begins to run from the day on which a minor completes his eighteenth year of age.

This means that a victim abused as a minor has until age 38 years to lay a complaint about being sexually abused.

The Australian Royal Commission into Institutional Responses to Sexual Abuse reported that victims wanted to prevent others being abused.<sup>21</sup> But they often took over 20 years to disclose abuse:

Many victims do not disclose child sexual abuse until many years after the abuse occurred, often when they are well into adulthood. Survivors who spoke with us during a private session took, on average, 23.9 years to tell someone about the abuse and men often took longer to disclose than women (the average for females was 20.6 years and for males was 25.6 years). Some victims never disclose.<sup>22</sup>

The Australian Royal Commission in the Final Report concerning Religious Institutions stated:

<sup>21</sup> "We were told that many survivors disclosed because they wanted the abuse to stop or wanted to prevent it happening to others. Other survivors disclosed because they could no longer carry the burden of the secrecy of sexual abuse. Disclosing early can immediately commence the important process of ensuring safety and protection for victims, taking steps to ensure the abuse is stopped and reducing risk to other potential victims. Disclosure is important for victims as well as the institutions involved, other children and the broader community. Disclosure is rarely a one-off event, and is a process. Victims will disclose in different ways to different people throughout their lives. Disclosures may be verbal or non-verbal, accidental or intentional, partial or complete."

The Royal Commission into Institutional Responses to Child Sexual Abuse, Report 2017, <https://www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse>.

<sup>22</sup> *Ibid.*

In private sessions held up to 31 May 2017, of the 4,029 survivors who told us about child sexual abuse in religious institutions, the majority (3,588 survivors or 89.1 per cent) told us when they first disclosed the abuse. Of these, 2,181 survivors (60.8 per cent) disclosed for the first time when they were an adult and 1,407 survivors (39.2 per cent) disclosed as a child. These figures are broadly consistent with those for survivors who experienced child sexual abuse in institutions under other management.

They are also consistent with research which suggests that many people who were sexually abused as children do not disclose their experience of abuse until adulthood. Some survivors who told us they had been sexually abused as children said they had not previously disclosed the abuse.

Of the 4,029 survivors who told us in private sessions about child sexual abuse in religious institutions, 3,342 survivors (82.9 per cent) provided information on who they had disclosed to. Of those, 284 survivors (8.5 per cent) said they had not disclosed their experience of sexual abuse to anyone prior to telling the Royal Commission.<sup>23</sup>

The data of the complaints to the Catholic Church showed the average length of time between the first incident of abuse and a victim reporting it was 33 years on average. The Catholic Church claims data showed that the time between the first alleged incident of child sexual abuse and the date when the claim was received by the relevant Catholic Church authority was more than 30 years in 59 per cent of claims, and more than 20 years in 81 per cent of claims. The average time between the first alleged incident date and the date the claim was received was 33 years.<sup>24</sup>

The Australian Royal Commission has demonstrated that minors take on average 30 years to complain about being sexually abused. Sexual abuse is a heinous crime which does enormous damage to the victims. Therefore, the Catholic Church needs to revert to previous law so that there is no prescription for cases of sexual abuse involving clerics, religious brothers and sisters. It needs to be explicitly stated in canon 1362 and other Church documents that there is no prescription for crimes concerning the sexual abuse.

### Countries without Procedures for dealing with Abuse Complaints

New Zealand has had procedures for dealing with complaints of sexual abuse for over twenty years. The New Zealand procedures are called *Te Houhanga Rongo A Path To*

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The Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, Final Report Religious Institutions, vol. 16, 518; [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_16\\_religious\\_institutions\\_book\\_1.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_16_religious_institutions_book_1.pdf).

*Healing*. They were made particular law for their dioceses by each diocesan bishop. Effectively, there was then the same law throughout New Zealand.

The text of *Towards Healing* in Australia was never made particular law and needs to be replaced. Many episcopal conferences have never had such procedures and they have until June 2020 to have people and procedures in place for dealing with complaints of sexual abuse by clergy and religious.

### Mandatory Reporting within the Church of Abuse or the Suspicion that Abuse is taking Place

A major advance in the *motu proprio* is the requirement that priests, deacons and religious must report sexual abuse when they know it has happened or they believe that it is happening. Reports can be only suspicions that sexual abuse is taking place. *Vos Estis Lux Mundi* Article 3 states concerning the requirement to report:

§1. Except as provided for by canons 1548 §2 CIC and 1229 §2 CCEO, whenever a cleric or a member of an Institute of Consecrated Life or of a Society of Apostolic Life has notice of, or well-founded motives to believe that, one of the facts referred to in article 1 has been committed, that person is obliged to report promptly the fact to the local Ordinary.

The local Ordinary would be the diocesan bishop, diocesan administrator, vicar general or vicar for clergy.<sup>25</sup>

However, while the obligation to uphold the seal of confession is not stated explicitly, this is included by mention of canon 1548 which cites canon 1550:

Canon 1548 §1. When the judge questions witnesses legitimately, they must tell the truth.

§2. Without prejudice to the prescript of canon 1550, §2, no. 2, the following are exempted from the obligation to respond:

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Canon 134 §1 In law the term Ordinary means, apart from the Roman Pontiff, diocesan Bishops and all who, even for a time only, are set over a particular Church or a community equivalent to it in accordance with Can. 368, and those who in these have general ordinary executive power, that is, Vicars general and episcopal Vicars; likewise, for their own members, it means the major Superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right, who have at least ordinary executive power.

§2 The term local Ordinary means all those enumerated in §1, except Superiors of religious institutes and of societies of apostolic life.

§3 Whatever in the canons, in the context of executive power, is attributed to the diocesan Bishop, is understood to belong only to the diocesan Bishop and to those others in Canon 381 §2 who are equivalent to him, to the exclusion of the Vicar general and the episcopal Vicar except by special mandate.

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;

Canon 1548 refers to canon 1550:

Canon 1550 §2. The following are considered incapable:

2. Priests regarding all matters which they have come to know from sacramental confession even if the penitent seeks their disclosure; moreover, matters heard by anyone and in any way on the occasion of confession cannot be accepted even as an indication of the truth.<sup>26</sup>

A priest cannot report sexual abuse that is confessed to him by a perpetrator in confession, but he could help a victim, who comes to him in confession seeking help, to report or complain about the abuse. It would have been better if *Vos Estis Lux Mundi* stated explicitly the obligation of the seal of confession.

Reports would usually go to the bishop or the religious superior. If a report involves a bishop or religious superior abusing or failing to act on abuse complaints, then the report would go to the metropolitan,<sup>27</sup> who for New Zealand is Cardinal Dew, or the papal nuncio or directly to the Holy See. Persons making complaints are protected in canon law, and any discriminatory action against them is a criminal act in canon law. There is no requirement in *Vos Estis Lux Mundi* that the acts of the investigation be shared with the accused bishop or religious leader before the Congregation for the Doctrine of the Faith is notified about the complaint or accusation.

There has been a general law in the 1983 Code that makes a crime of someone in authority failing to act thereby allowing harm to other victims. Canon 1389 states:

§1 A person who abuses ecclesiastical power or an office, is to be punished according to the gravity of the act or the omission, not excluding by deprivation of the office, unless a penalty for that abuse is already established by law or precept.

§2 A person who, through culpable negligence, unlawfully and with harm to another, performs or omits an act of ecclesiastical power or ministry or office, is to be punished with a just penalty.

<sup>26</sup> <http://www.vatican.va/archive/ENGLISH/ENG1104/P60.HTM>

<sup>27</sup> The term "metropolitan" goes back to the early days of the church, when a roman organisational model was borrowed by the Church. The word "metropolitan" comes from the Greek words for "mother city." The original metropolitan diocese normally had other smaller dioceses divided off from it, so it was in a sense the mother diocese.

The *motu proprio* of Pope Francis removes any doubt that this canon includes failing to take effective action against abusive clergy or religious.

### Care of Victims

Canon 128 established the legal right to restitution and repair of the harm caused:

"Whoever unlawfully causes harm to another by a juridical act, or indeed by any other act which is malicious or culpable, is obliged to repair the damage done".

Harm could be caused by a bishop or religious superior failing to act. Resolution requires both financial compensation and doing what is needed to heal or overcome the enormous damage that sexual abuses causes in victims.

Recent popes have been most concerned about caring for victims. Pope Benedict XVI, in an address to the American bishops in 2008 reminded them:

Rightly, you attach priority to showing compassion and care to the victims. It is your God-given responsibility as pastors to bind up the wounds caused by every breach of trust, to foster healing, to promote reconciliation and to reach out with loving concern to those so seriously wronged.<sup>28</sup>

Throughout his pontificate, Pope Francis has been most concerned about the spiritual care of victims. A victim met him once at the Vatican and gave him a picture of the Pieta, Michelangelo's statue of Mary holding the dead body of Jesus, in St Peter's Basilica. The victim told Pope Francis that Jesus had his mother, but he had nobody to care for him. This experience led the Pope to give a name to the canonical procedures for removal of bishops. He called the procedures "As a Loving Mother".<sup>29</sup>

Article 5 of *Vos Estis Lux Mundi* deals with the care of victims.

Article 5 – Care for persons

§1. The ecclesiastical Authorities shall commit themselves to ensuring that those who state that they have been harmed, together with their families, are to be treated with dignity and respect, and, in particular, are to be:

- a) welcomed, listened to and supported, including through provision of specific services;

<sup>28</sup> BENEDICT XVI, address to the US Bishops, 16 April 2008, [http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf\\_ben-xvi\\_spe\\_20080416\\_bishops-usa.html](http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf_ben-xvi_spe_20080416_bishops-usa.html).

<sup>29</sup> FRANCIS, motu proprio, *As a Loving Mother*, 4 June 2016, [http://w2.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio\\_20160604\\_come-una-madre-amorevole.html](http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20160604_come-una-madre-amorevole.html).

- b) offered spiritual assistance;
- c) offered medical assistance, including therapeutic and psychological assistance, as required by the specific case.

§2. The good name and the privacy of the persons involved, as well as the confidentiality of their personal data, shall be protected.<sup>30</sup>

Pope Francis emphasises that care of victims is much more than a financial pay-out, but also includes listening, support, spiritual and therapeutic assistance and they must be informed of the outcome of investigations.

*Vos Estis Lux Mundi* recognises the need for spiritual assistance for victims and survivors. It does not explicitly state that sexual abuse involves the spiritual abuse of victims, and there is scope for this reality to be recognised in revised editions of the *motu proprio*.

#### Lay People and Lay Organisations

Penal law is directed primarily at clerics and religious. There are still some serious issues regarding complaints against leaders of lay associations of the faithful such as the *Sodalitium Christianae Vitae* founded by Luis Fernando Figari. There are few members of these lay movements in New Zealand and Australia.

The Australian Royal Commission into Institutional Responses to Child Sexual Abuse demonstrated that within the Catholic Church perpetrators of sexual abuse were 37 per cent non-ordained religious (32 per cent were religious brothers and 5 per cent were religious sisters); 30 per cent were priests; and 29 per cent were lay people. Since a significant proportion of offenders are lay people, there needs to be an additional paragraph added to canon 1395:

A person who sexually abuses a person under age 18 or who acquires or holds or distributes pornographic images of minors below the age of eighteen years is to be punished with automatic excommunication and an offending cleric is to be dismissed from the clerical state.

Most penalties are directed at clerics and religious. An excommunication is the most severe penalty a lay person can receive and would prevent them receiving sacraments

until they repented. Canons 1323<sup>31</sup> and 1324<sup>32</sup> would exempt young people from the penalty for a variety of reasons. However, people in general would expect a severe penalty to apply to Church employees such as youth workers and institutional leaders. This needs to be addressed in future legislation.

#### Complaints about Bishops or their failure to act

There has been a lot of publicity about the cases of Cardinal Barbarin (France) and Cardinal McCarrick amongst others. Following this publicity and questions raised about dealing with accusations against bishops, Pope Francis devoted a significant part

<sup>31</sup> Canon 1323 The following are not subject to a penalty when they have violated a law or precept:

- 1° a person who has not yet completed the sixteenth year of age;
- 2° a person who without negligence was ignorant that he or she violated a law or precept; inadvertence and error are equivalent to ignorance;
- 3° a person who acted due to physical force or a chance occurrence which the person could not foresee or, if foreseen, avoid;
- 4° a person who acted coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience unless the act is intrinsically evil or tends to the harm of souls;
- 5° a person who acted with due moderation against an unjust aggressor for the sake of legitimate self-defence or defence of another;
- 6° a person who lacked the use of reason, without prejudice to the prescripts of canons 1324, §1, no. 2 and 1325;

7° a person who without negligence thought that one of the circumstances mentioned in numbers 4 or 5 was present.

<sup>32</sup> Canon 1324 §1. The perpetrator of a violation is not exempt from a penalty, but the penalty established by law or precept must be tempered or a penance employed in its place if the delict was committed:

- 1° by a person who had only the imperfect use of reason;
  - 2° by a person who lacked the use of reason because of drunkenness or another similar culpable disturbance of mind;
  - 3° from grave heat of passion which did not precede and hinder all deliberation of mind and consent of will and provided that the passion itself had not been stimulated or fostered voluntarily;
  - 4° by a minor who has completed the age of sixteen years;
  - 5° by a person who was coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience if the delict is intrinsically evil or tends to the harm of souls;
  - 6° by a person who acted without due moderation against an unjust aggressor for the sake of legitimate self-defence or defence of another;
  - 7° against someone who gravely and unjustly provokes the person;
  - 8° by a person who thought in culpable error that one of the circumstances mentioned in canons 1323, numbers 4 or 5 was present;
  - 9° by a person who without negligence did not know that a penalty was attached to a law or precept;
  - 10° by a person who acted without full imputability provided that the imputability was grave.
- §2. A judge can act in the same manner if another circumstance is present which diminishes the gravity of a delict.
- §3. In the circumstances mentioned in §1, the accused is not bound by a latae sententiae penalty.

<sup>30</sup> Ibid.

of *Vos Estis Lux Mundi* to procedures for dealing with complaints against bishops and other religious leaders.

The *motu proprio* provides for the removal of bishops and other major superiors:

Article 1. § 1. The diocesan Bishop or Eparch, or one who even holds a temporary title and is responsible for a Particular Church, or other community of faithful that is its legal equivalent, according to can. 368 CIC or can. 313 CCEO, can be legitimately removed from this office if he has through negligence committed or through omission facilitated acts that have caused grave harm to others, either to physical persons or to the community as a whole. The harm may be physical, moral, spiritual or through the use of patrimony.

§ 2. The diocesan Bishop or Eparch can only be removed if he is objectively lacking in a very grave manner the diligence that his pastoral office demands of him, even without serious moral fault on his part.

§ 3. In the case of the abuse of minors and vulnerable adults it is enough that the lack of diligence be grave.

§ 4. The Major Superiors of Religious Institutes and Societies of Apostolic Life of Pontifical Right are equivalent to diocesan Bishops and Eparchs.<sup>33</sup>

Complaints about sexual abuse by bishops or their failure to act are made to the Metropolitan archbishop, who must inform the Holy See. New Zealand has a National office of Professional Standards. This is financed by the bishops' conference as required by the *motu proprio*. When receiving such complaints, the metropolitan must first inform the Congregation for the Doctrine of the Faith. The metropolitan is only authorised to deal with the investigative phase of the complaint against a bishop. Then each month the metropolitan must inform the Congregation about the progress of the investigation. At the end of the investigative phase, when the investigation has been completed, the metropolitan gives his opinion (*votum*) about the complaint.

If the metropolitan bishop considers the allegation "manifestly unfounded," he is still obliged to inform the papal nuncio of the allegation. The obligation to report to the nuncio is meant to ensure accountability in dealing with complaints.<sup>34</sup>

If the metropolitan considers himself too friendly with the accused, or that he has another conflict of interest in dealing with the case, *Vos Estis Lux Mundi* states:

Article 12. §6. The Metropolitan is required to act impartially and free of conflicts of interest. If he considers himself to be in a conflict of interest or is unable to maintain the necessary impartiality to guarantee the integrity of the investigation, he is obliged to recuse himself and report the circumstance to the competent Dicastery.<sup>35</sup>

Under canon law at present, the judgement of the case involving a bishop is the prerogative of the Pope or a tribunal appointed by him.

Archbishop Scicluna has pointed out:

Procedures have already been in place when it comes to accusations of abuse of minors by priests, so the new norms address what to do when the accused is a bishop, cardinal, patriarch or religious superior and how accusations against leadership of abuse or misconduct must be reported. For example, "if a priest uses force with an adult, it's the bishop who takes that case," he said, but "when a person in leadership is guilty of misconduct, the jurisdiction pertains to the Holy See".<sup>36</sup>

#### Time Frame

The whole investigation is to be completed within 90 days. While an investigation of bishops is to be completed in 90 days, a time line has not been set for the investigation of complaints against priests and religious. However, many are going to conclude that the normal time limit for an investigation of sexual abuse by clergy and religious will also be 90 days.

#### Qualified lay people

The Bishops Conference must also draw up a list of qualified people to undertake abuse investigations. Their qualifications are not defined or described. The metropolitan remains free if necessary to use other people in a particular case. When the investigation is complete, the metropolitan writes a *votum* that expresses his opinion about the case. The *votum* and all the evidence in the case is sent to the Congregation for the Doctrine of the Faith at the Vatican, which decides how the case will be dealt with. In the case of Cardinal McCarrick, it was an administrative process for dismissal from the clerical state. It seems he was dismissed for solicitation in the confessional. Archbishop Apuron of Guam was found guilty of sexual abuse in a canonical penal trial. Archbishop Robert Finn of Kansas City was forced to resign for not observing civil laws on reporting abuse.

<sup>33</sup> [http://w2.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio\\_20160604\\_come-una-madre-amorevole.html](http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20160604_come-una-madre-amorevole.html)

<sup>34</sup> Juan ARRETA, Secretary of the Pontifical Council for Legislative Texts, quoted in "Official looks at meaning, role of 'metropolitan archbishop'", 1 June 2019, [cruxnow.com](http://cruxnow.com).

<sup>35</sup> FRANCIS, *motu proprio*, *Vos estis lux mundi*.

<sup>36</sup> Charles SCICLUNA <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>.



### Civil Reporting Laws

Observing the reporting laws in particular countries was first addressed canonically on 3 May 2011, in a circular letter<sup>37</sup> sent by the Congregation for the Doctrine of the Faith to Episcopal Conferences stating:

- e) Cooperation with Civil Authority  
Sexual abuse of minors is not just a canonical delict but also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries, nevertheless it is important to cooperate with such authority within their responsibilities. Specifically, without prejudice to the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases which involve religious or lay persons who function in ecclesiastical structures.<sup>38</sup>

The Vatican has argued that global requirement to report to civil authorities would in some places result in victims being harshly dealt with and the clergy being persecuted.<sup>39</sup>

*Vos Estis Lux Mundi* states:

Article 19 – Compliance with state laws

These norms apply without prejudice to the rights and obligations established in each place by state laws, particularly those concerning any reporting obligations to the competent civil authorities.

Also not observing civil law requirements is explicitly covered in the *motu proprio*:

Article 1 – Scope of application

<sup>37</sup> Francis MORRISSEY, states "The general legislation of the Church does not provide for circular letters as an authentic source of law. Nevertheless, we find this form used more often in recent years to outline procedures and to indicate new obligations... At times, though, a circular letter will accompany a set of norms on a given subject. An example of this can be found in the letter and norms regarding the procedures to be observed in petitioning the Holy See for a dispensation from priestly obligations. In these and in other similar instances it is quite clear that the norms constitute the legislative portion of the communication; the circular letter explains the intention, spirit, and purpose of the rules." See "Papal and Curial Pronouncements: Their Canonical Significance in Light of the 1983 Code of Canon Law," in *The Jurist*, 50 (1990), 118.

<sup>38</sup> CONGREGATION FOR THE DOCTRINE OF THE FAITH, Circular Letter to help Episcopal Conferences prepare guidelines for the treatment of cases of sexual abuse against minors by clerics, 3 May 2011.

<sup>39</sup> <https://www.nytimes.com/2019/05/09/world/europe/pope-francis-abuse-catholic-church.html>.

§1. These norms apply to reports regarding clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life and concerning:

- b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in letter a) of this paragraph.

Although the Doctrine of the Faith's circular letter in 2011 made it clear the Church must obey civil laws regarding abuse and reporting,<sup>40</sup> Archbishop Scicluna claimed this was the first time that "compliance with state laws" had become universal law.

Archbishop Scicluna explained it was unacceptable for people to try to protect the Church now, because "the good of the church requires truth and transparency, which includes respecting civil law... he added "that he hoped people felt "empowered to go to the police" to denounce a crime.<sup>41</sup> Furthermore, he said, people they have an obligation<sup>42</sup> to report already existing crimes, negligence and inappropriate behaviour to church authorities.<sup>43</sup> Furthermore, "If people have the right and the duty to denounce something illicit" in the case of abuse, "they also have the right to denounce if, after one year, nothing has been done."<sup>44</sup>

The obligation to observe civil reporting laws is clear. However, the Vatican maintains that mandating reporting to civilian authorities would imperil Catholics in some countries where they already face oppression.<sup>45</sup> Also privacy laws in some countries conflict with universal mandatory reporting. For example, the Italian privacy law allows a family to decide whether they will report a crime to the police and outsiders do not have the right to take the case to the police.

### Protection of whistle-blowers

Significant measures in the new law provide that accusers and whistle-blowers are to be protected from retribution.<sup>46</sup> *Vos Estis Lux Mundi* provides protection for them in

<sup>40</sup> <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>.

<sup>41</sup> <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>.

<sup>42</sup> <https://www.nytimes.com/2019/05/09/world/europe/pope-francis-abuse-catholic-church.html>.

<sup>43</sup> Archbishop Charles Scicluna, 9 May 2019: <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>

<sup>44</sup> <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>

<sup>45</sup> [https://www.washingtonpost.com/opinions/two-steps-forward-and-one-step-back-wont-cleanse-the-catholic-church/2019/05/11/9f0b06fe-7365-11e9-9eb4-0828f5389013\\_story.html?noredirect=on&utm\\_term=.7cc3879b880a](https://www.washingtonpost.com/opinions/two-steps-forward-and-one-step-back-wont-cleanse-the-catholic-church/2019/05/11/9f0b06fe-7365-11e9-9eb4-0828f5389013_story.html?noredirect=on&utm_term=.7cc3879b880a)

<sup>46</sup> <https://www.nytimes.com/2019/05/09/world/europe/pope-francis-abuse-catholic-church.html>

## article 4:

Art. 4 – Protection of the person submitting the report

§1. Making a report pursuant to article 3 shall not constitute a violation of office confidentiality.

§2. Except as provided for by canons 1390 CIC and 1452 and 1454 CCEO, prejudice, retaliation or discrimination as a consequence of having submitted a report is prohibited and may constitute the conduct referred to in article 1 §1, letter b).

§3. An obligation to keep silent may not be imposed on any person with regard to the contents of his or her report.

The person making the report is protected from prejudice, retaliation or discrimination as a result of submitting the report. This brings the Church legislation into line with most civil jurisdictions.

Obviously, persons making a report could easily be members of a religious institute or diocesan clergy. Paragraph 3 makes it clear that no obligation to silence or secrecy can be imposed on a person about their report or its contents. This eliminates non-disclosure agreements, as well as making it clear that the person making the report is free to report to any police or civil authority concerning the abuse.

### Confusion over the Role of Congregations

*Vos Estis Lux Mundi* states in Article 7 – Competent Dicastery:

§1. For the purposes of this title, “competent Dicastery” means the Congregation for the Doctrine of the Faith, regarding the delicts reserved to it by the norms in force, as well as, in all other cases and as far as their respective jurisdiction is concerned, based on the proper law of the Roman Curia:

- the Congregation for the Oriental Churches;
- the Congregation for Bishops;
- the Congregation for the Evangelization of Peoples;
- the Congregation for the Clergy;
- the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life.

§2. In order to ensure the best coordination, the competent Dicastery informs the Secretariat of State, and the other Dicasteries directly concerned, of the report and the outcome of the investigation.

§3. The communications referred to in this title between the Metropolitan and the Holy See take place through the Pontifical Representative.

There is sometimes confusion about which congregation deals with a particular case. Only complaints against clerics are dealt with by the Congregation for the Doctrine of the Faith. Dismissal of Religious brothers and sisters comes under the Congregation for Religious and Secular Institutes. If a priest fathers a child in mission countries, the case is dealt with by the Congregation for the Evangelisation of Peoples. In other countries the Congregation for Clergy deals with the case.

### Conclusion

There are significant measures in the new law which provides protection for accusers and whistle-blowers from retribution; allows qualified laypeople to assist church officials in their investigations; and requires that initial investigations of abuse cases must be completed within 90 days, and so dramatically speeds up the current process.<sup>47</sup> The law pertains to the sexual abuse not just of minors, but also of people considered “vulnerable” because they are physically or mentally disabled or because their situation leaves them feeling powerless to stop the abuse.

It also applies to clergy members who create, possess or use child pornography. A zero-tolerance policy is instituted, so any clergy member who abuses a child or covers it up must be removed immediately.

The *motu proprio* reaffirms the obligation to comply with secular reporting laws while upholding the seal of confession. It also ensures that those who report to Church authorities are free to report offences to the police or secular authorities.

This law for the universal Church is a significant step forward. There have been criticisms that it is not strong enough. I think the forthcoming revision of penal law will be crucial and hopefully we will receive this new law soon. This law will contain penalties and address such issues as prescription (statute of limitations) that cause difficulties today. It is hoped other legal measures will be taken, including making sexual abuse a permanent impediment (irregularity) to ordination and the exercise of ministry.

A new culture must be created within the Church. Pope Francis aims to prevent sexual abuse problems ever happening again. Therefore, a continuous and profound conversion of hearts is needed that involves everyone in the Church.<sup>48</sup>

# The Canonist

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