

We knew George Pell was guilty of child sex abuse. Why couldn't we say it until now?

Written by Michael Douglas, Senior Lecturer in Law, University of Western Australia

Cardinal George Pell, Australia's [most-senior Catholic](#), one of the most powerful Catholics in the world and a man once [praised by Tony Abbott as a "fine man"](#), molested two choirboys in the 1990s.

On 11 December 2018, a [jury found Pell guilty](#) of one charge of sexually penetrating a child under the age of 16, as well as four charges of an indecent act with a child under the age of 16. He did this when he was Archbishop of Melbourne. The incidents took place at St Patrick's Cathedral.

The verdict and the proceedings that led to it were subject to blanket ban suppression orders, which prohibited any reporting on proceedings involving Pell. Today those orders were lifted.

But today's story has been a long time coming.

In December, a number of Australia's leading news organisations published headlines about the Pell verdict without mentioning him by name. [They referred to](#) "the nation's biggest story" while carefully, yet begrudgingly, providing no details.

Less reputable corners of the internet were spilling the beans too. #Pell was trending on Twitter and on the front page of Reddit in Australia.

An Australian could easily find foreign news coverage of the matter on Google. So what's the point of the suppression order at all?

The Pell trials

The verdict came after a trial, which was described as the "cathedral trial", in Victoria's County Court.

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An earlier 2018 trial on the same charges as the cathedral trial [resulted in a hung jury](#) . The retrial began in November and the conviction followed in December.

Pell was also facing a separate jury trial – known as the “swimmers trial” – in respect to different events. That trial would have dealt with alleged child sexual offences [at a swimming pool in Ballarat in the 1970s](#) .

Last Friday, evidence prosecutors were relying on for the swimmers trial [was deemed inadmissible](#) . As a result, the swimmers trial will now not proceed.

Read more: [***Why the public isn't allowed to know specifics about the George Pell case***](#)

The end of the swimmers trial means the suppression orders are no longer needed. But there is still information that hasn't been made public.

We still don't know the identity of a survivor of Pell's crimes whose evidence was key to Pell's conviction in the cathedral trial. Through his lawyer, that man has [asked for privacy](#) . He deserves it. Sadly, the other former choirboy [died in 2014](#) .

The tension between the survivor's position, and the public's interest in understanding the full horror of Pell's crimes and hypocrisy, demonstrates how Australian law strikes a balance between open justice and other values.

Open justice and suppression orders

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The principle of open justice is summed up by the idea that “justice should not only be done but should be seen to be done”. It is a [fundamental principle](#) of our legal system.

But it is not an absolute principle. Courts have [various powers](#) to depart from open justice by closing proceedings to the public, concealing information from those present in court, or by prohibiting or otherwise restricting publication of material.

A “suppression order” is a kind of court order that prevents people from reporting on court proceedings. In Pell’s case, the suppression orders were made under section 17 and [section 18\(1\)\(a\) of Victoria’s Open Courts Act 2013](#).

The court decided it was “necessary to prevent a real and substantial risk of prejudice to the proper administration of justice that [could not] be prevented by other reasonably available means”.

Read more: [*When a fair trial could be at risk, suppression is the order of the day*](#)

A misconception is that the suppression orders were sought to protect Pell’s reputation, or that of the Catholic Church. Although that may have been an indirect result of the suppression orders, that is not why they were made.

The orders were sought by the prosecutors to protect the integrity of the swimmers trial.

They were made under legislation from Victoria. Other parts of Australia [deal with open justice differently](#). But courts in every state have principles that share the common value that the administration of justice may justify suppressing information in certain cases.

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A fundamental democratic value is that a person is innocent until proven guilty. Media reporting on Pell's case may have resulted in “[prejudicial publicity](#)”, undermining the neutrality of the jury system, and so undermining the integrity of a conviction.

The concern was that reporting of the cathedral trial by the media would have had the effect of prejudicing the impartiality of the jury in the subsequent swimmers trial (were it to go ahead).

An unusual case?

In Victoria, blanket ban suppression orders are often made when an accused is facing multiple criminal trials. In this sense, the Pell suppression orders were not unusual. However, such orders appear to be less common in other Australian jurisdictions.

In a recent judgment of the NSW Court of Criminal Appeal, [Nationwide News Pty Limited v Qaumi](#), it was observed that a back-to-back trial is an “exceptional case”. Nevertheless, in rare circumstances, the continued suppression of information of a first trial might be justified to protect a second trial.

The outrage surrounding the Pell suppression orders should be understood against this backdrop. But there are still things to be concerned about.

The public should be told why this case was suppressed

Given the current misconceptions about the purpose of the suppression orders in the Pell trials, the public ought to be provided with a set of written reasons explaining why the court decided they were justified.

Courts [have a duty](#) to provide reasons for their decisions. This duty flows from the principle of open justice.

The public is more likely to have confidence in an open and transparent system of justice. The rule of law works best if society believes the law is being applied fairly.

The court's written reasons for suppression in the Pell trials – if they exist – should be easily available to the public to aid their understanding of this case.

Suppression in the digital age

Journalists who ignored the court's order now face serious consequences. They could be “found in contempt” for disobeying the court. [It has been reported](#) as many as 100 journalists are in the firing line.

A person found guilty of contempt could face imprisonment, or fines, or both. Recent experience suggests Australian courts are willing to flex their muscles over people who disobey suppression orders. For instance, in 2017, blogger Shane Dowling [was sent to jail](#) for refusing to remove identifying information about alleged affairs.

But Australian courts, like those of other places, do not have authority over the entire world. The court's jurisdiction – its “authority to decide” – is limited by geography. In a practical sense, Australian courts don't have authority over foreign journalists based overseas. Enforcement of an order against international media organisations without a presence in Australia would be extremely difficult, if not impossible.

Read more: [*You wouldn't read about it: Adrian Bayley rape trials expose flaw in suppression orders*](#)

Where an order can't be backed up with a threat of physical force, you might call it futile. Such orders have been called “[paper tigers](#)”. To put it another way: a court should not bark unless it can bite.

The Pell trials illustrate how attempts by courts to control the dissemination of news in Australia may be rendered futile by foreign press, social media, and old-fashioned word of mouth.

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As one journalist [said](#) :

The idea that one judge in a Melbourne court could really define what the world can read about a figure of such global significance I think is a real shock to the world.

However, it is rare for an Australian suppression order to be rendered futile by the global media market. Most cases where suppression orders are granted are only of interest to local media. Media organisations generally comply with these orders and the vast majority are effective.

In this case, although it was a pain in the neck for journalists, arguably, the suppression order achieved its purpose. The sanctity of Pell's swimmers trial was protected. Every Australian should be entitled to a fair trial.

Going forward

The laws that suppressed Pell's guilty verdict are under review. Victorian Premier Daniel Andrews [vowed to overhaul](#) the state's approach to suppression orders, implementing many recommendations of a recent review of the 2013 Open Courts Act.

Although other states don't share Victoria's act, it would be sensible for the whole of Australia to revisit the circumstances in which courts prohibit access to information and hold individuals in contempt. Courts should be open as much as possible.

Political philosopher, Jeremy Bentham, once wrote that "publicity is the very soul of justice". The message echoes in 2019 with the slogan, "[Democracy Dies in the Darkness](#)". Now Pell's guilt is out in the open, we can finally see that justice has been done.

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