CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2019

Third Reading

Resumed from 20 May.

MR D.J. KELLY (Bassendean — Minister for Water) [10.48 am]: I began my speech on the third reading of this legislation yesterday. I put on record some information that I had acquired in recently times, largely concerning sexual abuse by the Christian Brothers and, in particular, Brother Danny McMahon, who taught at a number of Western Australian schools. The Children and Community Services Amendment Bill 2019 introduces mandatory reporting for ministers of religion. One of the reasons the royal commission recommended that mandatory reporting be extended to ministers of religion was so that there might be a culture change in those religious institutions where the royal commission found that sexual abuse of children was prevalent. The royal commission found that there was a culture of cover-ups, if you like, in many of those institutions. Information about incidents of child sexual abuse was not only not reported, but actually covered up. The royal commission found that that was the culture in many of those institutions. It therefore recommended that mandatory reporting be extended to ministers of religion as one way of changing the culture in those organisations.

I think that is very important because from the incidents in Western Australia that I have become aware of in recent times at schools run by the Christian Brothers, it is clear that there was a culture of compliance and of covering up some of the most horrendous examples of sexual abuse that can be imagined. My concern is that strong elements of that culture still exist. Direct governance of schools in Western Australia that were previously directly run by the Christian Brothers has been handed over to a new organisation called Edmund Rice Education Australia, which I think was put together in 2007. People who are familiar with the Christian Brothers will know that Edmund Rice was the founder of the Christian Brothers order.

In 2007, the Christian Brothers order transferred the governance of all its schools to Edmund Rice Education Australia. One might ask why that was done. Some might suggest that the Christian Brothers knew that they faced an avalanche of civil litigation from victims of sexual abuse in their schools, and that this move was a way of transferring the assets of the schools away from the Christian Brothers and into a different body to make it more difficult for victims of sexual abuse to gain access to those assets. The Christian Brothers would say that the new organisation was set up because the number of Christian Brothers in Australia is declining and, therefore, a new organisation needed to be established to ensure the ongoing survival of the schools.

Whichever of those stories is correct, my concern is that Edmund Rice Education Australia still has very strong elements of the old Christian Brothers culture, and that has the potential to hinder victims of sexual abuse in those schools, and teachers and staff associated with those schools, coming forward and being whistleblowers, if you like. Despite the royal commission finding that up to 20 per cent of Christian Brothers were abusers, very few whistleblowers are out there. Yesterday, I raised the point that the victims I have spoken to in recent times from schools like Trinity College, Aquinas College, and Christian Brothers College Fremantle, where I went to school, have often asked the question: people could see what was going on in those schools, so why did people not come forward? Why did the adults operating in those schools not come forward and put a stop to it? In the case of Brother McMahon, for example, it was obvious to 14-year-old children that he was abusing students. Why did other staff members not come forward? They did not come forward because the culture of the Catholic Church, and the Christian Brothers in particular, was that people just did not come forward and criticise the church or the Christian Brothers. That was the culture in those schools.

Edmund Rice Education Australia, which now runs those schools, continues to champion the heritage of the Christian Brothers. The very name of the organisation refers to the founder of the Christian Brothers order. It speaks very glowingly in all its publications about Edmund Rice as its founder. I have looked at the websites of those schools in recent days, and to this day they all continue to champion the Christian Brothers order and the positive things it has done for schools like Aquinas, Trinity and Aranmore Catholic College. Very little, if anything, is said about the Christian Brothers order and its history of abuse here in Western Australia.

I will give members an example from the website of Aquinas College. There are lots of former Aquinians in this chamber; I think the member for Churchlands is one. Under the heading "Mission, Vision and Values", the website states —

> Aquinas College is a Catholic school for boys in the Edmund Rice tradition. It is a member of Edmund Rice Education Australia (EREA) which encompasses all schools with Christian Brothers' heritage.
>
> The College acknowledges the significant contribution Christian Brothers have made to Aquinas' traditions since 1894.

That is a very glowing and positive comment on what Christian Brothers have done for Aquinas College. According to the royal commission, we know that at least 20 per cent of the Christian Brothers actually abused children. It was not a case of one or two bad apples; the Christian Brothers systematically abused children in this state. This

happened at Christian Brothers orphanages, such as Bindoon, Castledare and Clontarf. The conditions there were horrific—absolutely horrific—and those were the findings of the royal commission.

Prior to the royal commission, schools could argue, "Look, it was one bad apple. It was a bad Brother here and a bad Brother there. The Christian Brothers really were champions of fairness and they built our schools." Now that we have had a royal commission and it has found that the conditions in the orphanages run by the Christian Brothers were horrendous and that 20 per cent—I think 22 per cent is the exact figure the royal commission found—of Christian Brothers across Australia were abusers, it is no longer tenable, in my view, for the schools that were previously run by the Christian Brothers in this state and around Australia to continue to champion the heritage of the Christian Brothers. That is an absolute insult to the victims. We heard of Christian Brother after Christian Brother abusing children and we then heard of the hierarchy of the Christian Brothers continuing to facilitate that abuse.

Brother Tony Shanahan, who was the head of the Christian Brothers in this state in the 1990s, gave evidence to the royal commission that the Christian Brothers got their first reports of abuse in Western Australia back in 1919, and there was evidence that that abuse continued in every decade from then until the royal commission. In my view, it is no longer tenable for schools such as my old school, CBC Fremantle, Aquinas or Trinity to continue to champion the history of the Christian Brothers. As I have said, firstly it is an insult to the victims; and, secondly, it perpetuates a culture in those schools of not coming forward to blow the whistle on child abuse, because the Christian Brothers were synonymous with the abuse of children for so long. I hope that those schools and the new organisation Edmund Rice Education Australia, which now runs those schools, seriously considers the way in which they promote themselves going forward and how they view their heritage. Removing the promotion of the Christian Brothers from the point of view of victims and a culture change, in my view, would be a very positive step.

I would like to say that I am aware of a number of victims, former students of the Christian Brothers, who are now coming forward and taking common law legal action to sue for damages. That option is now open to victims because the statute of limitations was removed last year when this government passed legislation to facilitate that. Two victims of the Christian Brothers have now successfully sued at common law and a number of other victims are going through that process. In the most recent case, the Christian Brothers did not cover themselves in glory. John Lawrence was a victim of one of the orphanages—a children's home. The brothers admitted that they had abused him as a child, but they argued that because he had come to them as an orphan, his life was already damaged and he was not going to amount to much; therefore, his compensation should be less than he was claiming. Thankfully, the judge in that case, Mark Herron, found against the brothers and awarded him $1.39 million. I hope that the Christian Brothers learn from that experience, and as other victims come forward and seek to sue at common law, the Christian Brothers, whose track record right back to the 1990s when people first started coming forward, has been to spare no expense at frustrating claims—that is not my view; it is, again, the evidence before the recent royal commission—will negotiate and settle those claims in a fair and just way, rather than use every legal avenue they have to frustrate those claims.

Finally, I would like to again thank the minister for bringing forward this legislation. It is an important part in the protection of children in this state. The extension of mandatory reporting to ministers of religion is a particularly important part of that protection. I sincerely hope that all religious organisations will now be bound by mandatory reporting, including the Catholic Church, and face up to their responsibilities, face up to their past and embrace this new mandatory reporting. I know that Catholic Archbishop Costelloe has said that he opposes mandatory reporting for religious organisations. I hope that once this legislation passes, he reconsiders his position. I hope the Catholic Church reconsiders its position and puts the protection of children first, as it should be.

MR R.S. LOVE (Moore — Deputy Leader of the Nationals WA) [11.03 am]: I thank the house for the opportunity to speak on the third reading of the Children and Community Services Amendment Bill 2019. I will not take too long and will stick to the matters that were dealt with in consideration in detail more strictly than the previous speaker. I start by thanking the Minister for Child Protection and her staff for the calm and very informative responses to the issues that were raised throughout consideration in detail. I thank her for her concern for the welfare of children throughout Western Australia.

I would like to put on the record the fact that the Nationals WA will be supporting the aspects of this bill that the previous speaker just touched upon—that is, putting in place some of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. We know that as part of that, a minister of religion will become an occupation in which it will be mandatory to report child sexual abuse as it becomes known to them. Consideration in detail drew out some of the circumstances around that and some of the details about how that might operate. I think that that was a worthwhile discussion and I thank the minister again for her work and her efforts to explain that.

The bill also seeks to implement 41 recommendations of a statutory review of the Children and Community Services Act 2004. In that regard, I think that there has been a little bit more dispute from the community around those provisions. In particular, clause 32 of the bill will insert a new section 81 into the act. During discussion of that clause in consideration in detail, I raised with the minister a statement of concern the Noongar Family Safety and Wellbeing Council and the Secretariat of the National Aboriginal and Torres Strait Islander Child Care had raised

and asked the minister to speak on that. SNAICC and the Noongar Family Safety and Wellbeing Council advocates for the incorporation of what is known as Aboriginal family-led decision-making into the legislation. I read from their statement of concern —

> The additional requirement of further consultation —

In this bill —

> … is also problematic in the absence of a clear requirement of an AFLDM process.

It goes on to state —

> Legislation in other states has established clear requirements for independent Aboriginal and Torres Strait Islander representatives or organisations to facilitate the participation of a child's extended family in significant decisions for a child's care and protection. We refer specifically to model provisions including the *Child, Youth and Families Act* … (Vic) and the *Child Protection* Act … (Qld) …

In her response, the minister said—I am not directly quoting the minister but taking some guidance from what was recorded in *Hansard*—under the current provisions of section 81, the following people had to be consulted: an Aboriginal practice leader or other relevant Aboriginal officer; an Aboriginal person who in the opinion of the CEO has relevant knowledge of the child; the child's family and the child's community; and an Aboriginal agency that has relevant knowledge of the child, the child's family and the child's community. Not only should one of those persons be consulted, but all of those persons should be consulted. I think the minister feels as though the bill will significantly strengthen the consultation process rather than lessen it, and that there will be no misunderstanding between the position of SNAICC and the minister. The Minister for Aboriginal Affairs, who is just coming into the chamber, also outlined that position.

The Minister for Child Protection also said that her department would implement Aboriginal family-led decision-making and was committed to doing that without the need to amend the act. She also said that the department would trial that approach and that nothing in the act would preclude that from happening. She also said that there are other ways of ensuring that that would be put in place. Since the minister made those statements, the Nationals WA have been approached by those groups, as I think the minister would know. One of my colleagues in the upper house, Hon Jacqui Boydell, met with representatives of those groups. Their view is that they would like some changes made to the bill to incorporate Aboriginal family-led decision-making. The Nationals have not taken a firm position on what they put forward, but we will consider those matters as this bill goes through the other place. We will keep an eye on the bill, with a view to the concerns of that group, and keep an open mind as the bill is discussed in the other place. I thank the minister, whom we will no doubt hear from in winding up the third reading.

MS S.F. McGURK (Fremantle — Minister for Child Protection) [11.10 am] — in reply: I thank all members for their contributions to the third reading debate on the Children and Community Services Amendment Bill 2019. I have no further response to make, except to say that I look forward to following the debate in the other place. I think the expression I used in my earlier contribution to the third reading debate is that we should not let the perfect get in the way of the good. I firmly believe that the initiatives in this bill will form a very solid foundation on which to build genuine Aboriginal engagement in decision-making and protections for families and their children, with a view to those children having not only ongoing safety as a fundamental and unequivocal right, but also a connection to their culture, community and country. The amendments contained in this bill will form those solid foundations. As I have said before, and as the Minister for Aboriginal Affairs has said, I am concerned that some of the advocacy for Aboriginal family-led decision-making is based on misinformation about what is contained in the bill. It is important that people get their facts straight about what the bill will provide. I look forward to continuing to work with Aboriginal people around the state, including Noongar groups, to enable children and their families to be safe, happy and healthy.

Question put and passed.

Bill read a third time and transmitted to the Council.