

STANDING COMMITTEE ON LEGISLATION

CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2019



TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 6 AUGUST 2020

SESSION TWO

Members

Hon Dr Sally Talbot (Chair)
Hon Nick Goiran (Deputy Chair)
Hon Jacqui Boydell
Hon Simon O'Brien
Hon Pierre Yang

Hearing commenced at 11.29 am

The Most Rev. TIMOTHY COSTELLOE SDB
Archbishop of Perth, sworn and examined:

The Very Rev. Father ABRAM ABDELMALEK
Senior Parish Priest, sworn and examined:

Father VINCENT GLYNN
Episcopal Vicar for Education and Faith Formation, sworn and examined:

Mr DANIEL LYNCH
Director, Office of the Archbishop, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to the hearing. Today's hearing will be broadcast. Before we go live, I would just like to remind you all that if you have any private documents with you, keep them flat on the desk to avoid the cameras. We can begin the broadcast now.

Before we begin, can you please state your name and capacity in which you appear before the committee? I might just work clockwise around.

Father ABDELMALEK: I am Father Abram Abdelmalek from the Coptic Orthodox Church. Today I am representing the Oriental Orthodox Churches, who are present in WA; namely, the Ethiopian, Eritrean, Syrian and Coptic Orthodox Churches.

Archbishop COSTELLOE: My name is Archbishop Tim Costelloe, and I am the Catholic Archbishop of Perth.

Mr LYNCH: Daniel Lynch. I am the Director of the Archbishop of Perth's office, and I am accompanying the Archbishop today.

Father GLYNN: I am Vincent Glynn. I am the Episcopal Vicar for Education and Faith Formation in the Archdiocese of Perth.

The CHAIR: Thank you very much. Now I require each of you to take the oath or affirmation. We will start again in clockwise order.

[Witnesses took the oath or affirmation.]

The CHAIR: You will each have signed a document entitled "Information for Witnesses". Have you all read and understood that document?

The WITNESSES: Yes.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. Please note that this broadcast will also be available for viewing online after this hearing. Please advise the committee if you object to the broadcast being made available in this way. A transcript of your evidence will be provided to you. To assist the committee and Hansard, would you please quote the full title of any document you refer to during the course of this hearing, for the record, and please be aware of the microphones; try and talk into them and ensure you to not cover them with papers or make noise near them.

I remind you that your transcript will be made public. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in private session. If the committee then grants your request, any public and media in attendance will be excluded from the hearing. Until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. That, of course, is for your protection, not ours.

Before we go into the committee's questions, I would like to invite each of you to make an opening statement, if you would like to.

Archbishop COSTELLOE: I certainly would like to, if I may. I hope it is only brief and to the point. I have got it prepared, so I will read it, if that is okay?

The CHAIR: Yes, Archbishop; that would be fine.

Archbishop COSTELLOE: I am grateful for the opportunity to make a few simple remarks as we begin. I am conscious that there is a list of questions which some of you are interested in pursuing, so I will be brief in these opening remarks.

The Catholic Church in Australia has an appalling history in relation to the sexual abuse of children and young people by clergy, religious and laypeople who work in and for the church. The horror of the abuse itself and its devastating impact on the lives of survivors and their families, friends and communities has been compounded by the dreadful failures of so many of the church's leaders, including bishops, to respond in an even remotely adequate way. In my eight and a half years as the Archbishop of Perth, I have never tried to do anything other than acknowledge that dreadful history, and nor have I walked away from the need to translate words into actions. I am willing to explain what actions I have taken in that regard if you wish and if we have time.

It is because of this that I understand why people are confused or even dismayed by my insistence on upholding the principle of the absolute confidentiality of confession as it is practised in the Catholic Church. There are two principal reasons for my approach to this matter and, again, I am happy to expand on them if you wish during our time together. However, simply put, the first reason is based on my conviction that the proposed legislation, no matter how well intentioned it might be, will not make children and young people any safer and may in fact make the situation worse for young people who are experiencing abuse or for older people who are seeking to address the abuse they suffered as a child.

This position is based on the actual way in which confession is celebrated in the Catholic tradition, on the essential part confidentiality plays in the practice of confession and on the possibilities that the confidentiality of confession offers to those who are seeking help in dealing with this dreadful reality in their lives. In short, I sincerely believe that the proposed legislation runs the very real risk of achieving exactly the opposite of what it is trying to achieve.

The second reason is of a more theoretical and theological nature, and concerns the Catholic Church's constant teaching on the essential role which confession plays in the practice of the Catholic faith. Individual confession and the receiving of absolution from a priest is understood in the Catholic faith to be, in the first place, an intimate encounter between an individual person, who recognises that he or she is a sinner, and God, from whom forgiveness of sin comes. The priest is present purely and simply as the human instrument who mediates this divine forgiveness. Sins are not confessed to the priest; they are confessed to God. The priest, therefore, has absolutely no right and no authority to disclose anything that takes place in this intimate encounter with God.

In addition, it is the teaching of the Catholic Church that confession is the only ordinary way in which serious sin—that is, sin which would put at risk a person’s eternal salvation—can be forgiven. To compromise the confidentiality of the confession by making the priest a mandatory reporter to the secular authorities would so severely impact on the psychological freedom of a person conscious of sin to bring that sin before God for forgiveness and therefore the person’s salvation could be imperilled. That is Catholic teaching.

Lastly, the proposed law would render priests who remain faithful to the obligations that they assumed at the time of their ordination—in other words, who were simply exercising an essential aspect of the practice of the Catholic faith—liable to prosecution and conviction as criminals for being faithful to their commitments. To make the free practice of an essential part of the Catholic faith illegal seems to me to be something that modern secular societies have always understood to be beyond the limits of their authority.

Many of the draft questions which were sent to my office yesterday afternoon touch on various aspects of the two points I have addressed, so I will leave it there for the moment and do my best to respond openly and honestly to any questions you might have.

The CHAIR: Thank you, Archbishop. Reverend Father, did you want to make an opening statement?

Father ABDELMALEK: Yes. Thank you very much for this significant opportunity to present before the committee to discuss the very critical aspect in regard to the orthodox teaching which is confession. Confession in orthodoxy, as the Archbishop said, is similar to the Catholic Church. It is different in some areas but the principle is the same thing. In confession, it is a confidential and private interaction between the person and the Saviour—that is, the Lord Jesus Christ—in the presence of the Holy Spirit. We do not give the absolution automatically. It is not like a rubberstamp. We permit the person to have communion. No. We scrutinise the genuineness and authenticity of his or her repentance before we can allow them to participate in the other church sacraments.

[11.40 am]

If a criminal, for argument’s sake, confessed his or her sin to the confession father, we would request them to fix the issue or the wrongdoings they did. For example, if they stole something, we ask them to re-compensate four times or five times the stolen property. If they killed someone, then they are not allowed to have communion before they surrender themselves to the authority. This is a sign of genuine repentance. If they do not do so, they are excommunicated; they will not have any other service in the church because they did not show genuine repentance. Repentance is the only way, in orthodoxy, towards salvation. If they are not repentant, then they will lose their life on Earth and also their eternal life in heaven. So it is very instrumental for the confession father to be adequately placing his absolution if the case is not corrected.

The other thing in confession, we do not only give absolution, but we give solution and counselling to the problem. So, for someone to come and confess to the priest of something, we have to address this soul to make it integrated back or built again and regain the confidence in themselves. If this is not clear in their mind, the thing that the priest or the confession father is going to report is that there is no confidence anymore. This piece of legislation is focused only on sexual abuse of children; however, it did not consider physical, emotional and financial abuse of children. That is very important as well. The other thing is why, for example, a lawyer is not obliged to report his client if he was informed of sexual abuse of a child. This legislation stops short of fairness across other vocations. Why should the religious priest or minister report a client where the lawyer should not report a client? The other thing that I can see is that we are losing an opportunity for a paedophile to surrender himself to the authorities through confession, because paedophiles are smart enough—they groom the children, the family and everyone around before they do the act—so they

will not approach the priest in confession if they are intending to reoffend; otherwise, it is not repentance. If he comes and reports an act of such nature and he knows that the priest is going to report him, I think they are smart enough that they will not approach the priest or anybody because they will be captured.

We have not been consulted at all in this process, and I think that was a major flaw. The Orthodox Church, whether Oriental or Eastern Orthodox Churches, hold confession very highly—the same as the Catholic and the Anglican Church. We have not been consulted, and this is a flaw in the process. The other thing, we feel that it was completely disrespectful to the culture of so many citizens of Australia who believe in multiculturalism and multi-ethnicity. In the Oriental Orthodox Church, we have seven or eight cultures involved—the Ethiopian, the Eritrean, the Armenian, the Indian, the Coptic and the Syrian. This is completely disrespectful to their culture because they revolve around being mentored by the church and the confession father. If they were not consulted, or if they think that this confession sacrament is tampered with, there would be unrest and they would be not confident in the system as a whole.

We believe strongly that this piece of legislation and amendment of it is going to achieve nothing but probably closing some of the churches, because the priest cannot release any confidential information they received in confession, so they are either to be defrocked if he does this or persecuted by the authorities. We are putting the ministers of religion in a very awkward position—either to be defrocked or persecuted by the authorities. Most of our hierarchy, like in the Oriental Orthodox Church, reside in other states or overseas, so I cannot change the canons of the church on my own—we have to refer back to the authorities, and the authorities do not see why we should release any confidential material received in confession. However, we encourage victims of any crime whatsoever to report to the authorities. We may accompany them to the police department to help them and support them reporting that to the authorities, because we are after justice after all and we have zero tolerance towards child abuse of any sort.

So we encourage the victim to report to their parent if they are minors and to report to the authorities. But as a priest of confession, I cannot do that willingly, because I have got limits within my functions and within my vocation. I cannot overpass this thing. It is hierarchy and it has been practiced for the past 2 000 years in all the Orthodox Churches. Thank you.

The CHAIR: Thank you. Your opening statements have been very comprehensive and you have certainly touched on a lot of the questions that we intend to raise with you. I might first of all check with my colleagues whether there is anything that needs following up at this stage; otherwise, I will start going through the questions, if that is okay with you.

Reverend Father, you said specifically that your church has not been consulted, and you said that was the same with the Catholic Church. Can I just confirm that with Archbishop Costelloe?

Archbishop COSTELLOE: Yes, that is the case. We were not consulted at all.

The CHAIR: I move then to the point that several submissions have raised with us, which is that there has not been an adequate exploration of royal commission recommendation 16.26. I am sure you do not need reminding what that recommendation was. Can I ask you whether advice from the Holy See has been sought, received and published by the Australian Catholic Bishops Conference? If yes, please provide details of that advice; if no, why hasn't the advice been sought or received? Finally, has the Catholic Archdiocese of Perth received any other advice from the cardinals of Australia or the Holy See as to how it should respond if the bill is enacted in its current form?

Archbishop COSTELLOE: Thank you. Yes, I can respond to all of those matters. As a preliminary remark, I spoke to the president of the Australian Catholic Bishops Conference, Archbishop Mark

Coleridge, who is the Archbishop of Brisbane, last night about this matter to confirm my understanding. Advice was formally sought from the Holy See, as the royal commission recommended. I cannot give you the exact date when that happened, but the advice that was sought covered the specific issue of confession and many other issues that the royal commission recommended that the church approach the Holy See about—it was not just that issue. Advice was sought, and formal advice from the Holy See was communicated to Archbishop Coleridge, as the president of the conference, in, I think, sometime in March. Now, I cannot give you the details of that response because the response of the royal commission was that the bishops should seek advice from the Holy See in relation to a recommendation from the royal commission. We have done that.

We have received the advice, but we have made a formal approach to the federal government in order to formally communicate the advice, because it is partly advice from one sovereign state to another sovereign state. It is the belief of the bishops that until the federal government has been formally advised of the Holy See's response, it should not be made public anywhere else. As soon as it is communicated to the federal government, which I believe is happening at a meeting between the president and vice president of the Bishops Conference and the Attorney General in early September, once that has happened and those protocols have been honoured, then it will be made public. I hope that provides what information I am in a position to be able to offer.

[11.50 am]

The CHAIR: I think I have a couple of questions here coming from the committee coming from the committee.

Hon JACQUI BOYDELL: Do you feel that that leaves you a missed opportunity to present that information to the committee in relation to the bill?

Archbishop COSTELLOE: I cannot present it, so I suppose in one sense it presents a missed opportunity, but it is out of my control, because the advice that we received first needs to be communicated formally to the federal government. I think that is just the protocol.

Hon NICK GOIRAN: Archbishop, have you seen the advice?

Archbishop COSTELLOE: I have, yes.

Hon NICK GOIRAN: Are you in a position to take on notice whether that meeting with the Attorney General will happen before 15 September? The significance of that date for our committee is that that is the date that we have to report to Legislative Council.

Archbishop COSTELLOE: I can certainly confirm the exact date of the meeting. It has been scheduled. I do not have the date myself, but Archbishop Coleridge indicated to me last night that it was sometime, I think, in the first part of September, so hopefully it will be. I am quite happy to make a commitment to provide that information as soon as it is received.

The CHAIR: We will take that as question on notice 1.

Archbishop COSTELLOE: Sure.

The CHAIR: Thank you.

Hon SIMON O'BRIEN: Your Grace, we appreciate the protocol position—it possibly goes beyond protocol—that you find yourself in; however, could we make an assumption that you having read the advice that all the information that you will be providing to us about your policy and position is consistent or not inconsistent with that advice?

Archbishop COSTELLOE: I think you can certainly make the presumption that it is not inconsistent the advice, yes.

The CHAIR: I will go on with the next question.

Father ABDELMALEK: May I have comment on this, I am sorry?

The CHAIR: Yes, of course, I am sorry.

Father ABDELMALEK: It is just a technical comment that we did not have enough time from Monday to today before the hearing to explore every possibility to present to the committee—only three or four days, with all the other commitments, so I am sorry about that. I did not have a chance to communicate with the Holy See in Egypt, for example.

Archbishop COSTELLOE: Can I just add that you also asked me about whether the Archdiocese of Perth had received advice from the cardinal of Australia or the Holy See. It is an opportunity for me to explain that there is no cardinal of Australia. There are two Australian cardinals, both retired, Cardinal Cassidy and Cardinal Pell. When Cardinal Pell was the Archbishop of Sydney, and I am not being facetious when I say this—Cardinal Pell as the Archbishop of Sydney was simply the Archbishop of the third-largest diocese in Australia. He had no authority at all in relationship to the Archdiocese of Perth or any other archdiocese. The Catholic Church does not have a head of the Catholic Church in Australia. Every bishop in his own diocese is immediately subject to the Holy See. So the notion, is very different, as I understand it, to the Anglican Church, where they have a primate who is the head of the church in Australia. That is not the structure of the Catholic Church. The Catholic Church is a communion, a unity, of individual churches, which is to say individual dioceses with their own bishop, who are in communion with each other and all in communion with the Bishop of Rome, the Pope. So that notion that somehow or other there is an overarching one authority in the Catholic Church in Australia is quite mistaken. It is very commonly expressed in the press, I know, but it is not at all the reality of the Catholic Church and its structures. So it might be useful to have that clear.

The CHAIR: Thanks for that clarification.

Hon NICK GOIRAN: Further to that, Archbishop, to what extent then can we take your evidence today as speaking on behalf of all the bishops in Western Australia?

Archbishop COSTELLOE: That is a good question. I would be confident, purely on my own personal knowledge of the other bishops, that they would share basically the same approach that I would have, but I cannot speak on behalf the other bishops in Western Australia. As I say, every diocese is immediately subject to the Holy See. Often, the bishops of Western Australia will work together cooperatively. The best example of that would be, for example, the decision, before my time, to establish one Catholic Education office of the whole of Western Australia, but that was a decision that each of the four bishops jointly took together, but they did not have to do that and one the bishops could have stood out if you wanted to. So all I am doing here today is speaking on behalf of the Archdiocese of Perth, but I think I can say that I would be surprised if the other bishops had major differences with the position that I will be putting. I do not know if that helps.

Hon NICK GOIRAN: Do you have any problem if the committee were to send your evidence from today to the other three bishops to seek their views?

Archbishop COSTELLOE: No, not at all.

The CHAIR: Thank you. I have a question specifically for Archbishop Costelloe. In your submission—specifically for the archbishop because it refers to the archbishop's submission—you advise that

Pope Francis has indicated that it will not and cannot change the law of the church regarding the seal of confession.

Archbishop COSTELLOE: Yes.

The CHAIR: If the Pope is universal legislator of the Catholic Church, how is it that he cannot make this change?

Archbishop COSTELLOE: Yes, I am happy to explain it. It is in one sense a complex issue, but in another sense not really. In the Catholic understanding, church law contains both what we might call human law and what we would call divine law. Obviously, the Pope, as the universal legislator can make changes to what I am terming human law. A very clear example would be—not that he is likely to do it tomorrow—but the Pope could technically change the laws on the mandatory celibacy of clergy, for example, in the Catholic tradition. He could change that because it is not divine law. But the laws around the confidentiality of confession, because they touch the very nature of the sacrament as we understand it, come under of the category of divine law, and no-one, including the Pope, can change divine law. Now, it is a matter of faith, of course. It is not something that we have just created in the last five minutes. It has always been understood in our tradition that the sacraments fall under the category of divine law, so no-one in the church, including the Pope, is able to change law that we believe comes directly from the will of God. So that is the difference, and that is why said that he would not and could not change that. There are many things he can change, some things he cannot.

The CHAIR: This is a question for both of you. Mandatory reporting provisions for ministers of religion are in place in most other Australian jurisdictions. Some of those jurisdictions, including the ACT and Tasmania, have implemented recommendation 7.4 of the royal commission regarding religious confession. Are you aware of how your colleagues in these jurisdictions are responding to those provisions?

Archbishop COSTELLOE: I am happy to go first. Look, I have not had extensive formal discussions with any of the bishops in which this legislation has been enacted. As you say, I think, and you are perhaps more aware of this than me—I am certainly aware that it has been enacted in the ACT, I believe also in South Australia, possibly, as you are indicating here, in Tasmania. I think it has been passed in Victoria but not yet enacted; I think that is the situation. My understanding is that in New South Wales the information gained in religious confession has been exempted. That is my understanding, but I might have that wrong. I have not had intensive and formal discussions with the other bishops, but I have spoken to them. I think there are a couple of points that I have gained from what they have said to me. One is that some of the priests are very unsettled by this, and one of the reasons why they are unsettled is that they are worried—if I can use a colloquial phrase—that they may be “set up” by someone who has an agenda and wants to try to trap the priest, and that is a real concern of some of our priests, because most priests, like everybody else in our society, really want to be good citizens, and they want to be able to live according to the laws of the land. They also want to be able to be faithful to their conscientious convictions, and this proposed law, in fact it has been enacted in other places, creates an impossible conflict in that regard, so there is a great deal of disquiet about it, I think. I think in practical terms, at least so far, it has not impacted dramatically on the life of priests in terms of any priest being accused and convicted of this kind of thing. The reason for that, I think—this might be jumping ahead—is that in fact, given the way, at least, in the Catholic tradition confession is practiced, it is very unlikely ever to happen, but nevertheless it is more the principle, by this legislation, of kind of being characterised as people who have no respect for the law, who do not care about the welfare of children and those sorts of things, and that is disturbing for our priests. I think it is offensive to our priests, and it is a worry.

[12 noon]

This might sound strange in relationship to the terrible mess the Catholic Church has made of this in the past, but, nevertheless, the question of the relationship of trust between our people and our priests, and the confidence of people in coming to their priest to seek advice, is being undermined by this, and that has a major impact on the relationship between our priests and our people. I have heard that from two or three of the bishops in the various jurisdictions that you have mentioned.

Hon JACQUI BOYDELL: Can I just clarify: in the states where this legislation has been enacted and has affected the defining principles of Catholic belief in divine law, there has not been any formal conversation or conference or meeting to discuss these issues?

Archbishop COSTELLOE: The bishops discuss these issues.

Hon JACQUI BOYDELL: But you said, in an informal sense, that you have. Has there been a formal meeting discussing this issue of where this process is affecting divine law within the Catholic Church?

Archbishop COSTELLOE: Yes, thank you. I misunderstood. I thought it was about my personal conversations with individual bishops. The Bishops' Conference—that is all of the Australian bishops together—we meet twice a year in a plenary meeting in May and in November. I would say that at least over the last four or five years, this has been a topic of constant discussion, yes.

Hon JACQUI BOYDELL: That is good. It was just that you said there had been no formal meeting. I wanted to clarify that.

Archbishop COSTELLOE: No. It is very much on the agenda of the bishops, yes.

Hon JACQUI BOYDELL: Thank you.

Hon NICK GOIRAN: I have a few questions on this, Archbishop. First of all, are you aware that Queensland has not proceeded to bring in legislation for people in religious ministry as mandatory reporters?

Archbishop COSTELLOE: I had not heard that Queensland had, so that is why I did not mention it, yes.

Hon NICK GOIRAN: Are you aware that the royal commission recommended the inclusion of five groups of individuals, five classes of people, to be mandatory reporters, of which people in religious ministry is but one?

Archbishop COSTELLOE: Yes, I am aware of that.

Hon NICK GOIRAN: The other four groups are out-of-home care workers, as group 1; group 2 is youth justice workers; group 3 is early childhood workers; and the fourth one is registered psychologists and school counsellors. Have you ever had any interactions with people from those groups over the course of your time as Archbishop?

Archbishop COSTELLOE: In relation to this matter, do you mean?

Hon NICK GOIRAN: No, just generally. Have you had any interactions with people who work in those areas?

Archbishop COSTELLOE: I guess I have. We would have many institutions and agencies within the Catholic Church in Perth that are involved in these kinds of activities, so I am certainly aware of what they do. I am not quite sure of —

Hon NICK GOIRAN: Based on your experience in dealing with those people, how would you describe the proportion of children at risk that you would interact with in comparison to the proportion of

children at risk that out-of-home care workers or youth justice workers or early childhood workers or registered psychologists might come into interaction with?

Archbishop COSTELLOE: In terms of personally, in terms of our clergy, I would say the interaction of our clergy with children or young people at risk in those categories is quite minimal in most cases. Most of our priests, certainly in this archdiocese, are fully engaged in parish ministry, so of course they come into contact with lots of young people, but always in the parish context. The days of the church running, for example—I do not know what you would call them—homes for disadvantaged young people, orphanages, reform places, are long gone. So the constant interaction with children and young people at risk in that sense would be quite limited, I would be very confident in suggesting.

Hon NICK GOIRAN: Just two further questions. One is that I note that Western Australia is the only jurisdiction that has decided not to make out-of-home care workers mandatory reporters, and is the only jurisdiction to not have made early childhood workers mandatory reporters. Nevertheless, I would not want any of your evidence today to be misconstrued by any unsophisticated reporters. Can you make it clear to the committee what is the position with regard to the Catholic Church about people in religious ministry becoming mandatory reporters as a general principle, and just parking the discrete issue of the confessional to one side? Is there any objection to people in religious ministry in the Catholic faith becoming mandatory reporters?

Archbishop COSTELLOE: The answer to that question is quite clear. It is the very question that each of the five metropolitan archbishops of Sydney, Melbourne, Brisbane, Adelaide and Perth were asked at the royal commission about this matter, and all five of those bishops, of whom I was one, indicated that we would support the introduction of mandatory reporting of religious ministers, with the exception of the confession, yes.

Hon NICK GOIRAN: It may be worthwhile to get also the view of the Orthodox community on this same point.

Father ABDELMALEK: Before I respond to this, I just wanted to refer back to the previous question. From memory, and correct me if I am wrong, the child sexual abuse report by the commissioner indicated that around 11 or 14 per cent only came from religious institutions. That includes any religious institution that was under investigation. Of course it is appalling, and we condemn that, but the risk is almost 10 per cent of the rest of the other corporations in our society, like the Army, police, out-of-home care, schools and everything. So if you want to quantify the number or the risk that comes from religious institutions by cases.

Hon NICK GOIRAN: I understand. This is going to my earlier question about the five groups and the proportion.

Father ABDELMALEK: Yes.

Hon NICK GOIRAN: Thank you.

Father ABDELMALEK: In orthodoxy, we always seek justice for victims and on predators. We do not have any problem whatsoever in reporting any crime to the authorities if we aware of it outside the confidentiality of confession. At the moment, we are cooperating with the police regarding a paedophile case in the community. There are no problems, because he did not come and confess to us. The police found out that there were criminal activities by a community member, and we are fully cooperating with them.

The CHAIR: Many submissions have raised the question about the entire confidentiality of the confessional being under threat because of this measure. The fact is, of course, that section 124B(1)(a) only applies when child sexual abuse is disclosed. What do you make of those concerns

in terms of perhaps representing a broader fear in the Catholic community about state interference in church matters? I am happy to open that up to both of you. It clearly applies across the board.

Archbishop COSTELLOE: I think, from my own experience of talking to our people, that there is a specific concern around the question of the confidentiality of the confessional, but there is also a broader concern about the whole relationship between church and state, of which this is a particular example. Rightly or wrongly, I think many people—it is just the reality—would be of the view that once the confidentiality of the confessional is breached, then there is nothing that will necessarily stop that breach from growing greater and greater. If I could put it this way, with great respect, the present Parliament might well decide to pass a law that limits it only to child sexual abuse, but another Parliament in the future presumably, if it has the numbers, could change that. So once the principle is breached, then people will be very concerned—I suppose it is like a bracket creep kind of idea, isn't it?—that this will grow. It is interesting. I am certainly not suggesting that it would be good to expand it, but there are very many other very serious crimes that people can commit which also, in theological terms, come under the category of sins, and the case for breaching the confidentiality of the confessional in relationship to abuse could well quite easily be transferred to the same thing for murder or the same thing for theft or whatever.

[12.10 pm]

Archbishop COSTELLOE: Continues

It is the principle of the confidentiality that is important and so, yes, there would be many people in our Catholic community who are worried about this broader question—and the even broader question of how far is this going to go before it begins to really impact on the ability of Catholics to freely practise their faith, particularly the essentials of their faith such as this, in this society. We have always understood that at least in Australia, this would never have been under threat because we respect religious freedom. There is a lot of concern amongst Catholics that this whole issue is now becoming less certain than it was for us. I do not know if that answers the question, but that is certainly my reading of the mood of the people.

Father ABDELMALEK: It would be more or less the same response. People in the Orthodox Church believe in the integrity of the confession father and that he will never release any secret, whether it is a family secret or a personal secret to anyone. If this is to become reality, then we are destroying the sacrament of confession because confidence or trust in the priest would be eroded little by little and then there is no measures to the growth of the spiritual of individuals to guide them away from additional crimes and additional misbehaviour because we use the opportunity of confession to guide people and raise their spirituality. Eroding the sacrament of confession, I believe, would increase the crime rate in the state because we are trying to build a nation, build a good community and good citizens through the sacrament of confession.

People are really confused about why and some of them even told me, “Why is the state trying to take over the church? It is the only avenue for us to release our worries and to release our stresses and we find free counselling advice if we cannot afford to go to psychologists or a psychiatrist. We come to the confession, Father, to release our worries and we find rest in the house of God. Why is the government trying to deprive us from this freedom of expression and freedom of faith and freedom of religion?” There is lots of worry in the community. As the archbishop said, where is the limit? Should I be mandatory reporting tomorrow a rape case, a murder case, a theft case, child violence, whatever, because this all comes under the category of prime crime? If a child is physically abused, should I report it? Where is the limit? Where can we draw the line?

Hon NICK GOIRAN: You have both brought up an interesting area that I had not considered, and that is that the mandatory reporting provisions are only in respect to sexual abuse. Prior to entering

Parliament, I spent an inordinate amount of time assisting victims of crime, which included sexual abuse, but there were many cases, particularly cases that went before the Redress WA scheme, where there were young children who had been very, very severely physically abused, but not sexually abused as the term would apply. Clearly under the bill that is before us, there would be no mandatory requirement for you to report one of those type of cases. I hear that you are in agreement that you should be mandatory reporters with the exception of the confessional. My question is: what would your policy be, or what is your policy at the moment, with regard to some of these serious crimes? I am particularly interested in crimes against children more so than adults, not that we do not care about crimes against adults but there is a clear distinction there about a person who is in a vulnerable capacity and perhaps does not have the capacity to go to the authorities of their own volition. What is your policy in regards to offences against children, irrespective of whether they are sexual or not—or is there a policy?

Archbishop COSTELLOE: Yes. In one sense, I would probably have to go and seek some further clarity around it. Our professional standards office and our safeguarding structures, I think—I am expressing my presumption here and so I cannot give you a guarantee that this is the case—but I am presuming, particularly because most of the people who work in this area in this archdiocese have a history in policing and often in the areas of child abuse or domestic violence and those kind of things, that they would be very open to it and possibly already are reporting these matters to the police. I would not have any difficulty with that. The question for us is really about the unique nature of confession, certainly in our tradition. As Father said, we want to be good citizens and we want to be contributors to the welfare of our society. We do not want to be hiding things from people or finding ways of people avoiding justice—we are not interested in that at all. In terms of what we are talking about here today, it is the unique nature of the relationship in the confessional that is at stake. These other questions, I think, are questions that are certainly on people's minds. I know they are on the minds of our safeguarding people. I would have no problem in reporting to the police any crime or a strong suspicion of a serious crime that I had come across as long as it is outside of the confessional, and have in fact done so.

Father ABDELMALEK: We have a thorough policy regarding children and youth ministry in our church. Our churches are safe. As I said earlier, we have zero tolerance regarding crime against children. Reporting is mandatory in any case and reporting would be escalating from, for example, the Sunday school servant to the superintendent to me and then we would take the necessary action whether to report it to the police or fix it internally. If it needs to be reported to the police, then we would report it to the police. Sometimes if a child is misbehaving and one of the youth coordinators or servants told him off and that was like, you know, an abuse, we can fix that internally; it does not need to go to the police. But if it is a real crime then we have mandatory obligations to report it to the authorities. In this policy—I have got a copy here if you are interested—it does not allow for any adult to be alone with a child anywhere in the church. It is not allowed to even be in a secret room; the room has to be a see-through room and open and clear.

All servants and youth ministers have to obtain the working with children permit and you have to be of good standing in the community. All sorts of guidelines and precautions we take before we introduce another to the service of children or young youth. I am not bragging in this, but over the 25 years being a priest in Perth, I do not remember any paedophile who came to confess to me because they do not confess; they do not repent because they are reoffenders. There is no point in putting this; it would achieve nothing, reporting a paedophile. However, for those who are victims of crime at a young age, we put also a policy of support for them with their parents and with the authorities. We counsel them and we ask them to wash their guilt because normally they come

broken and feel, “This is my mistake. I have done something wrong and someone attacked me and so I feel I am bad” so we try to wash their guilt and reinstate them in their faith and humanity.

We advise them to report again to the authorities and we accompany them to their parents and encourage them to tell their parents what happened. Then we may advise the parents to go to the police, and we can escort them to the police if they want. Also, in the journey of healing we work with them on forgiving. Justice is on one side, but forgiving is a very important thing, because if they do not forgive and move on, they will be emotionally destroyed and this feeling of being abused will be haunting them all the time until they go to their grave. We help them to grow spiritually and accept themselves and understand that there are bad people in the society but you are a good person and this is an opportunity for you to grow. Forgiving is something, but justice is something else. This is not a crime against the child only; it is a crime against humanity, so humanity has to take justice of that criminal or predator, not the child. The child has to grow normally as a human being.

[12.20 pm]

Hon JACQUI BOYDELL: One of the challenges that I am facing, and probably the public and other members are facing, as we debate this legislation is, I think, the arguments presented when we talk about the sacrament of confession. I completely understand the difficult nature in which priests would deal with that, because effectively you are living with two laws, and particularly divine law is the basis of your belief. What does a priest do if someone comes and confesses? Can we shed some light on that? Both in a Catholic sense and an Orthodox sense, what are the steps a priest would take? That needs some airing to give people some confidence that the confessor does not just get to walk away. What is the impact if confession is not included in the legislation, or is? What do you currently do if that should happen?

Archbishop COSTELLOE: In one sense it is a difficult question to answer because I genuinely believe that it is a very rare occurrence that an abuser comes to confession, so I would think that most priests have no experience of this. It is not a common thing, for all of the reasons that Father has said and that I can expand on as well. It really is very unlikely—not impossible, obviously, but very unlikely—that an abuser will come and confess in such a way that the priest knows exactly what he is talking about, the crime and the sin of which he or she is guilty.

Hon JACQUI BOYDELL: So there is no process to address this?

Archbishop COSTELLOE: There is, I am just trying to make the point that we do not have a lot of experience in this because it is a rare occurrence. In our Catholic tradition, and certainly here in Perth, the priest would understand very clearly that in the case of someone who comes and confesses to this particular crime, the priest has a number of responsibilities. The first one is to decide, as best he can, whether or not there is genuine sorrow. In the practice of confession, it is about someone who is coming, deeply conscious of his or her sinfulness, looking for God’s forgiveness and, therefore, genuinely sorry and determined to do something about it. If the priest is not convinced that that is the case, he will not give that person absolution, and that is church law. The priest has to have confidence in himself that this is genuine and that the person is genuine. That is a judgement call that each priest will make; nevertheless, that is clear.

On top of that, it would be the very clear responsibility of the priest to do everything he could. This can sound a bit airy-fairy, if I can use that expression, but it is not in reality. There is a significance about the role of the priest in Catholic theology. People tend to listen to what a priest says to them and take it seriously, particularly if they are coming to confession. The priest would have the responsibility of pointing out, with no ambiguity, the seriousness of this matter; the dreadful damage that this is causing; the fact that it is not just a sin against God and against the child in the

community, but it is a crime; and that this perpetrator has to be absolutely committed to doing everything he or she can to bring this abuse to an end.

Hon JACQUI BOYDELL: And would the priest work with the person to do that?

Archbishop COSTELLOE: Yes, well —

Hon JACQUI BOYDELL: That is what I am trying to understand.

Archbishop COSTELLOE: — within the context of the actual confession itself, yes, he would to the extent that he can. One of the things that the priest would do—we are not a police force; we cannot enforce things—he would insist with the person, or say to the person, “You need to wait for me outside so that we can discuss this outside the context of this particular thing that we are doing here now and deal with it.” Of course, as soon as that happens, the confession is over and there is no question of breaking the seal or not. What I am trying to say is that it would be the responsibility of the priest to do his level best to convince the perpetrator that this has to stop, that possibly the only way this is going to stop is for the perpetrator to give himself in to the authorities, and to assure the person that he will accompany them to help them do so—all of that. He cannot force the person, but he can put a lot of moral pressure on the person. A priest would be failing in his responsibilities if he did not do that.

Hon JACQUI BOYDELL: The responsibilities, yes.

Archbishop COSTELLOE: Yes, it is very clear that the priest has a fundamental responsibility to do everything he can without breaking the seal of the confession to ensure, to the extent that he can, that this abuse stops, absolutely.

Hon NICK GOIRAN: And that is the case irrespective of any bill before the Parliament.

Archbishop COSTELLOE: That is the case now—absolutely, yes.

The CHAIR: Can I just follow that up with some specific questions about the nature of confession. We have a question that is related to the anonymity of confessions. How common is it today for confessions to be heard anonymously? In practice, if the provisions in question in the bill were enacted, would priests be likely to inquire as to the identity of the penitent if child sexual abuse was disclosed?

Archbishop COSTELLOE: If I can respond to the first part first: anonymous confession is very common. In the last 50 years, I would say, the practice of the option for a face-to-face confession with the priest has grown in the Catholic tradition. It is the law of the church—which is not always followed precisely, but nevertheless, it is the law of the church—that the possibility for anonymous confession must always be provided. Certainly in our cathedral, and I would say in the vast majority of our churches, that possibility is there and many, many people take advantage of it. It is the standard way of going to confession that you would go anonymously. Normally that means that there would be some kind of screen, which means that the priest and the penitent do not actually see each other, so the only contact is a voice contact, if I could put it that way.

The CHAIR: How does somebody opt for the face-to-face, where they are identifiable?

Archbishop COSTELLOE: For example, in our cathedral, in our confessional set-up, when the priest is on one side of a large room, which is separated down the middle, the person coming to confession comes in the other side. As soon as that person comes in there is a spot for them to kneel. There is a screen there and the priest is on the other side. If the person wants a face-to-face confession, they move further into the confessional room where there is a clear glass separation. There is no possibility of physical contact, but the priest and the person can see each other, if the penitent opts

for that. I think the point about it is that if someone has committed something as heinous as child sexual abuse, they are certainly going to opt for anonymous confession. That is the first thing.

The CHAIR: And in the Orthodox community?

Father ABDELMALEK: In Orthodoxy we do not have anonymous confession; it is always face-to-face. Most of us do it in the nave of the church, in front of the altar. Some of us do it in the office of the priest. In our situation, the office of the priest has glass doors, so it is an open area for everyone to see through.

We have physical contact, like in the beginning we would pray together to invoke the Holy Spirit to come, and then at the end I would put the cross with my hand on their head and pray the absolution for them, and this is the only physical contact that we go through. Anonymous confessions, only received once over the phone from another state, because he was ashamed or embarrassed to talk to the local priest, and that was the only time. And talking about anonymity, in confession, it is one-to-one, so if I go to the police and reported a confession, there is no witnesses. The offender has the right of silence. You cannot force him. I would not be able to give evidence other than what I say. He has got the right of silence and he can deny everything I say, so there is no point of going and giving—you know, reporting to the police.

[12.30 pm]

Hon NICK GOIRAN: Can I just jump in here and just make the observation that if the person had confessed to you, face-to-face or in an anonymous way, where you had enough information to know, say, for instance, that the daughter of this person was being abused, you going to the police and reporting that would at least enable the police to engage with that family and potentially stop ongoing abuse from taking place. I think there is a place for mandatory reporting, and no doubt that is why you both said earlier that you are agreeable to being mandatory reporters. The issue here is the confessional, and whether it would actually be of any value in practice.

Father ABDELMALEK: Correct.

Hon NICK GOIRAN: Ultimately, if priests, whether they are Catholic or Orthodox, are not even going to comply with the law when it comes to the confessional, then a lot of what we are discussing is somewhat pointless. Maybe that is a question that I could ask, Madam Chair, at this time. If this bill does go through in its current form, is there any intention by members of your respective faiths to comply with the law?

Father ABDELMALEK: That is a hard question.

Archbishop COSTELLOE: It is and it is not. I would answer it this way: every priest knows what his obligations are, and he knows what the penalties are of not being faithful to those obligations, and he also knows the basis of those obligations, and the basis of the obligations from the church's point of view, as we discussed earlier, are divine law. I am certainly not going to tell my priests to break the divine law. I will not be telling them to do that; I cannot tell them to do that. I have got enough confidence in the priests of the Archdiocese of Perth to believe that they will know exactly how they should respond in any particular situation and what their obligations are, and the obligations are in conflict. The obligation to the civil law and the obligation to God's law are in conflict. I have no doubt about what decision I would make if I was faced with that challenge and I have no doubt about what decision other priests would make.

I would also make the point that in terms of this question of anonymity—and I think there are some slight differences between the orthodox approach and the Catholic approach, but when a person comes to confession in the Catholic tradition, they always have the right to anonymity. They do not have to go to any particular priest, they always have a right to go to a priest whoever that might be,

and it is not the tradition of the Catholic Church and never has been for the priest to delve into the sin. Because I go back to the point, and it is a religious belief, and I understand that not everyone shares our beliefs, but in the Catholic understanding, this is a conversation between a person conscious of his or her sin and God. The priest is simply there to mediate the conversation, and so the priest cannot determine what the person says or does not say. The most likely scenario, particularly if the law were to be changed, is that no-one guilty of this crime and this sin will come to confession at all, because they know that they run the risk of being handed in to the authorities. I might make a point about that in a moment. If they do, if they are genuinely sorrowful and want to be forgiven, I just think it is human nature that they will look for a priest who does not know them, they will look for a situation in which it is anonymous, and they may well only speak about the sin in vague terms, and it is not the job of the priest to start delving into the specifics. That has never been the Catholic tradition.

So, in many ways, I think it goes back to the discussion we had earlier about what other bishops have experienced when this has been enacted in their jurisdictions. The law in some ways is going to be almost ineffective because it is talking about things that almost certainly will not happen. And the other point that I would make is that if the law is changed, then on those rare occasions—and I would imagine that they are rare, and the Father was suggesting that in his own experience, too—but on those rare occasions where a perpetrator might come to confession because he knows that anything he says is confidential, at least there is a chance that the priest who is receiving the confession can begin to talk to him and hopefully lead him to the point where he will take some action about it. If he does not come at all, that chance is lost, and what is the result of that? The abuse will inevitably continue.

That is why I said at the start that the possibility in this law, well-intentioned though it might be, is that it will actually lead to less safety for children and young people because, number one, there is no chance that a perpetrator will subject him or herself to the possibility of being convinced to do something about it, and number two, if it is someone who discloses that they are being abused because it is a safe place for them to talk about it, knowing that it is going to be confidential, they will not come either, and they will then possibly not be able to deal with it. So I really worry that the outcome of this change may well be to make children and young people less safe rather than more safe.

Father ABDELMALEK: I would just like to add to the comment that Mr Goiran has said. You are right if he reported the name of the child, but in most cases, they will not. Because we are not prosecutors, we are not an investigation authority, and we will not be able to interrogate him: whom did you do this with and which family? So as the Archbishop said, normally, it is not the details of the sin that we listen to; it is the sin in general. “I have committed adultery.” I cannot ask him: with who? That would be intruding his privacy. The same thing with any other crime. But, again, it is very important to understand that it is a solemn chance, it is really a chance for us to help society by putting the more pressure that His Grace talked about on that person to surrender himself. If we lose it, we are making the society even worse, because we could not help the perpetrator or the victim of the crime.

The CHAIR: There are three questions from committee members. I will start with Hon Jacqui Boydell.

Hon JACQUI BOYDELL: Thank you, Chair. Potentially, do you think an unintended consequence, should this bill pass, where priests in the Catholic sense and also in the Orthodox sense are considering divine law ahead of civil law, potentially that is the case, that might happen, that you actually might get more revelations because people will come to you knowing that the priests are protected by divine law and are putting that on a higher standard than civil law, and therefore it will

drive more people to come and confess, and then you place your priests in an ever-growing, very difficult position?

Archbishop COSTELLOE: Yes. Could I respond simply by saying I do not think that is the case, because I think it seems to be the case that the experience of priests—and that is the situation at the moment, by the way, that it is divine law, and that is what the whole confidentiality of the confessional is all about. So that is already the case; that is why people come and come with confidence. But in spite of that, it seems to be the case that the incidence of abusers coming to confession is infinitesimal; it is very small. It is because—I think, Father, you alluded to this as well—many abusers simply do not accept that what they are doing is wrong. There is a pathology around sexual abuse that is quite frightening, but that is the reality.

[12.40 pm]

They do not accept that what they are doing is wrong, so it would never occur to them to come to confession in the first place to seek forgiveness for something that they do not believe is wrong. I do not think that is likely, but even if it were, it still means that the priest is in a position to do something about trying to convince that person to take the necessary steps, including handing himself or herself in to deal with it. If you lose that opportunity, then there is no chance of that happening and that leaves people more at risk from these abusers rather than less at risk from these abusers. I genuinely believe that. It is the dreadful nature of abuse that people do not even seem to understand often what it really is—I mean the perpetrators just do not seem to understand it.

Father ABDELMALEK: There are also other alternatives. If he does not want to surrender himself, we can advise that he seeks a counsellor, a psychologist or a psychiatrist who can help him with this issue and then they accept him and that we are reporting. There is always a way around it but I cannot voluntarily report him. I can report him if I receive the concession from him, the permission: “Do you mind if I call the police on this?” If he says okay, then it is okay but I cannot force him to do that.

Archbishop COSTELLOE: This is not a case of either priests mandatorily report what they hear in confession or they do nothing; that is a false dichotomy. Priests know that they have major responsibility here.

Hon JACQUI BOYDELL: Yes. That is why I was asking about the responsibility previously because there is not a lot of understanding about what is, so I agree with that.

Archbishop COSTELLOE: Yes, and it is varied, but priests take it very seriously.

Hon JACQUI BOYDELL: I have no doubt about that.

Hon SIMON O'BRIEN: I want to concentrate now on the victims rather than the perpetrators, although all the various elements of this issue are very important. I know that our witnesses would be interested to review the testimony we received earlier this morning in connection with the removal of children by the department, and a whole lot of issues that arrived with that. It was refreshing to have that focus on the victim, and that is what I want to do now as we talk about this quite separate issue, which is very important as well, about the seal of the confessional. I can put it in this context: we have got—I do not know how many—perhaps 600 submissions about this. I do not believe any of those is from a perpetrator of child sexual abuse—not one saying you should do this or you should do that. But we have got lots from people who have said that they, as victims, have found healing, a way forward and some relief, maybe decades later, by going to confession to share anonymously their experience and seek, flowing from that, advice, counsel and healing, and probably not wanting a redress of historical offences from 40 years ago or anything perhaps because it is someone that is a close family member. For a whole lot of reasons, it is complicated, but they

are hurting and they have been hurting for years and they have found comfort in the confessional. That came through very strongly in a number of submissions.

With that extensive preamble, but I think it deserved it, I want to focus now on the victims. From what I am hearing, the number of perpetrators of child sexual abuse that come along to the confessional to volunteer that information is very small, if at all. But from the evidence that we have received—this is one of five folders I have got of submissions—a heck of a lot of them are from victims seeking comfort in the confessional. Your Grace and Reverend Father, could you reflect on that to give us a clear understanding of how we should view those submissions, please?

Archbishop COSTELLOE: There are two clear issues in the context of the confidentiality of the confessional: there is the perpetrator who comes in, and then there is the person, either as a child or as an adult, retelling something that happened to them in their childhood. I have heard of and I have spoken to some people directly, as adults, who have spoken about the fact that they were victims of sexual abuse as children and the one place they could go where they could be confident that they could share this with someone who could listen and maybe provide some support and provide some advice et cetera was a Catholic priest in a confessional because at least what they said there would be held in trust. I am thinking of one or two cases in particular where that experience enabled the survivor to survive. It enabled them to find the strength, if you like, to deal with it, or at least to find a sympathetic ear who would be able to listen and provide support and whatever help he could.

In the Catholic tradition, if something like this were to happen, the priests know very clearly that there is the confession, which has an integrity of its own, but once that is completed, as long as the person is willing to talk about it outside the confessional, then the possibilities of assistance are endless, including working with that young person or that adult to get to a point where they are actually ready to tell a trusted person or even to go directly to the police. All of that is at risk of being lost if the confidentiality of the confessional is breached. It is why I have tried today—I know that we seem to have been talking all about priest and the effects on the priest and all the rest of it, but I began my presentation this morning by pointing out that the real danger here is that children and young people will be more at risk rather than less at risk because they will have nowhere to go. The reason why they go to the confessional is because it is confidential and they can trust that it will be held in trust and then they will be helped to deal with it.

Hon SIMON O'BRIEN: But if we had a law of the state that said if a victim of recent or historic sex abuse comes to confession then the priest is obligated to advise us of that, then the priest, despite the wishes of the victim who wants to get some private counselling, would then be obliged under the law to say, "Well, sorry, you've told me that but I now have to go to the police." What would the effect be on victims?

Archbishop COSTELLOE: The primary effect, providing that this change is known—and this is the other problem that I will come to in a minute—will be that the victims, the survivors, will not have that avenue to seek support. They will be left without any support; that is the likely outcome.

Hon SIMON O'BRIEN: Thank you. Reverend Father.

Father ABDELMALEK: Plus, another effect is that it would create animosity between that person and the church and this person might not come back to church whatsoever because it betrayed their trust. Not only that but his family and his peers would be affected, and then this would have a direct effect not only on the church but on the community. When the priest has reported this incident, the whole community would know because no privacy has been sealed in this matter. That would create divisions and unrest within the community; the priest has betrayed their trust. This is one thing. The other thing that you ask—if the priest does not have the ability to counsel and console the victim,

in many cases they would refer them to child workers and then psychiatrists and psychologists to the point that we pay the fees for them as well from the church because their sanity and their wellbeing is of prime interest for us. We are here and we are serving them because of the compassion we have towards the people of God, towards his children, towards the vulnerable of his children. We are not here just to count heads. We are here to heal; we are here to help people. If we cannot help them personally, we would point them in the right way to get professional help. If they do not trust us, then they are losing this opportunity to get professional help as well.

[12.50 pm]

Hon PIERRE YANG: Father, it is a question for you. It is in relation to the issue of confidentiality, which is kind of nicely linked to that. I do not want to sound disrespectful; I just want to clarify a part of your evidence. I might have misheard it. In your evidence earlier I think you said that if a young person goes in and gives a confession to a priest in the Orthodox Church and the young person discloses an abuse perpetrated against him or her, I think you mentioned that it is possible that a priest could work with the young person and also work with his or her parents—perhaps, you know, encourage them to go to the authorities to report the abuse. I just wanted to ask you to please clarify in terms of the confidentiality involving young people under the age of 18, if there was a case similar to what you have mentioned, what the priest would do to involve the parents of that young person who has seen an orthodox priest?

Father ABDELMALEK: Only if the child allows the priest to give them the extra support to go and talk to the parents, the priest would not be able to do anything. So, the priest would tell the child, “I am happy to come with you and you talk to your parents regarding this. You don’t worry. You don’t be afraid because your parents love you and they will listen to you. They will not think bad of you.” I would encourage him, but I would not get the parents involved forcibly on him, you see. So I would encourage. If he or she does not want that, I will not be able to push any further.

The CHAIR: I have a specific question here about the protection of privacy for mandatory reporters. But just before I go into that, can I ask you about this issue of the integrity of the relationship between the victim and a priest. Doctors and teachers have been mandatory reporters now for some years. Do you think that that has affected the relationship between children and the medical profession, and children and teachers?

Father ABDELMALEK: If I may.

Archbishop COSTELLOE: Yes, of course.

Father ABDELMALEK: My personal belief is that doctors should not report that without my permission or consent, because when I go to a doctor, I confide in him my sorrows, agonies and pains. If I wanted to report it to the police, I can do that myself. I did not know that doctors have a mandatory obligation to report to the police before I read this amendment of the bill. That was, for me, a discomfort. How can a trusted person, like a doctor with an oath to keep the confidentiality of his patients, do this? I cannot speak on behalf of the relationship between the doctors and the patients, but for me, I would not trust a doctor with my personal stuff now.

The CHAIR: Would you extend that to a general opposition to the principle of mandatory reporting?

Father ABDELMALEK: Maybe mandatory reporting in some cultures, like dobbing, out of the scope of your work; however, not like in confession, because in confession there is the oath before God and before the hierarchy and before the entire congregation on the seal of confession. Doctors have a similar oath as well—the Hippocratic oath or something like this. I do not know whether teachers and other staff like nurses have a similar oath or not, so every profession would have to deal with this. But when there is an oath before a different authority, that oath has to be resolved with

authority that put the oath. So if doctors have an oath, it has to be resolved with the AMA, for example.

Archbishop COSTELLOE: I do not have any concrete evidence one way or the other in terms of what the possible change in the relationship, say between children and teachers or patients and doctors, might be, so in a way I cannot answer that question. My own view is that mandatory reporting is a key plank in the efforts to protect children and young people, and that is why I have expressed, as I said at the royal commission and again this morning, that I understand the need for religious ministers to be mandatory reporters outside of the sacrament of confession. But I do think that in terms of confession, there are all the human dimensions of it, obviously; but, certainly for us, and I am sure in the orthodox tradition as well, there is this other dimension, which for us is absolutely vital, and that is the theological dimension—the question of the relationship between a person and God. It makes the confessional situation an absolutely unique situation, and so I think it is a standalone. I think that you can make arguments for or against all of the other categories. You know, there is no doubt that if priests become mandatory reporters, it will alter the relationship that they have generally with their people, because that level of trust in the confidentiality of the priest will be broken down. That may be a price that we have to pay for the good of children and young people.

I think the confessional situation is different because it has this added and I would say more fundamental dimension of the person's direct relationship with God. I do not think, to be frank, it is the place of the state to interfere with a question of a personal relationship with God, remembering, as I said in response to another question, it is not a case that the priest either mandatorily reports or does nothing. There are many, many things a priest can and must do, always respecting, however, that ultimately because this has been disclosed in confession, it is disclosed by the person to God and the priest can only deal with it outside the confessional if the person involved is in agreement with it. So I think we are dealing with a quite unique case here. Then there are all the other things that we have talked about and the questions that were raised earlier about confession perhaps being one of the few places left where a person can go, knowing that this will be held in trust and they can begin to deal with it in confidence; I think that is a very valuable contribution that we make to society that should not be lost.

The CHAIR: Thank you for that. I am going to make this the last question.

Father ABDELMALEK: Before we go on, may I? I have a quick question. I am sorry. The bill does not specify whether the abuse happened in Australia or overseas. Coming from overseas, most of the congregation are migrants in the Oriental Orthodox Churches, so in many cases it would have happened in the mother country 10 years, 15 or 20 years ago, before they came. Would that be considered in the bill, because it does not specify that the victim and the perpetrator should be in Australia? That would add an extra burden on the conscience of the priest receiving confession. What is the point then if I go and report this case? Is it for the prosecution of the perpetrator or for the healing of the victim? What is the purpose?

The CHAIR: Thank you for that. I am going to make this the last question. This is the question about the protection of privacy and then I will ask my colleagues whether they have anything else they would like to ask. The question is: many submitters expressed concern about priests being excommunicated if they break the seal of confession. We are going to ask you to outline the process for excommunication, but the key part of the question is about the act protecting against the identity of the reporter being revealed. There is a prescribed penalty of \$24 000 for revealing the identity of a reporter. What would be the repercussion for priests or bishops who break the seal of confession to make a report if the Catholic Church does not find out that they made a report?

[1.00 pm]

Archbishop COSTELLOE: Excommunication is a kind of fascinating issue I think for people both inside the Catholic Church and in other places, and often misunderstood. In the Catholic tradition, excommunication as a penalty for the breaking of the seal of confession is described in canon law as—I will just say it and then explain it—*latae sententiae*. It means that it is affected by the very act itself. So by the very act of breaking the seal of confession, the bishop or priest would be excommunicated—that is, he would be cut off from the communion of the church. Whether anyone else knows that or not at that time, that is in fact the reality. This will then become a question of his own conscience, but it means that he cannot celebrate the sacraments, he cannot receive any of the sacraments, he cannot act in any way as a minister of the church. In the Catholic tradition for this particular breach of the church's law, only the Holy See can lift that excommunication. I understand the point of the question: if no-one else knows, well, in a sense, what is the big deal? But the big deal is a very big deal for the person who has broken the seal. If he has any sense of his obligations as a priest, he would understand that. Everything he then did would be an illicit act in the eyes of the church. Should that come to light, as I suspect it very likely will somewhere along the line, because the victim themselves might begin to speak about it, or, who knows, then the bishop of the priest involved would be obliged to act immediately, and the penalty would possibly lead to dismissal from the priesthood.

The CHAIR: I think the point of the question was not to trivialise in the way that you are insinuating, but to point out that the mandatory reporting is not a public act. It is not supposed to be a public act and there are penalties against disclosure.

Archbishop COSTELLOE: Yes, okay. I was not trying to act as if it was being trivialised—I did not mean that at all. I was simply trying to explain that even if it is not a public act, the consequences do not depend on it being public. Excommunication takes effect by the very act of breaking the seal, and that is the church's law.

The CHAIR: Reverend Father, you had a response.

Father ABDELMALEK: Yes, I have got two points on this question here. The first point is, the confession father has got the authority over the confessee. If a bishop comes to me or if a fellow priest comes to me and confessed something in confession, I have got the authority to excommunicate him and ask him to report that to the hierarchy. If not for a long time, I can ask him to stop having communion for certain periods of time until he fixes this. Within the confession, the confession father is an authority over the confessee. Of course, it is an authority of love—there is nothing more than that. This should be clear. The other thing is, we are not asking the priests, who should be honest and faithful, to have duality in themselves—to do things in discordance to what they believe. My church tells me to do this, and I joined the clergy because I believe in this. So the state cannot ask me, “Oh, it's okay; no-one would know about coming to tell us.” You are creating division in my conscience. That would not be accepted. I may add also a point here about—sorry, I lost the train of thought.

The CHAIR: We can give you a moment, because I think my colleagues have probably got a couple of further questions. If you remember your train of thought, just give me a wave.

Hon NICK GOIRAN: As a person who does not identify as coming from either the Catholic or the Orthodox community, I found today's hearing very valuable to better understand some of the fundamentals of your faith. I want to make sure that I have not misunderstood anything today, so I just ask you to indicate whether these notes I have made are consistent with your position. That is, firstly, that there has been no consultation with the Catholic or Orthodox churches about this bill; secondly, that the Catholic and Orthodox churches in Western Australia both support ministers of religion becoming mandatory reporters except where the information is obtained during religious

confession; thirdly, that the sacrament of the confessional is a matter of unchangeable divine law and not changeable canon law; fourthly, that the absolute confidentiality of the confessional is an important benefit for victims who use the confessional; fifthly, that the bill will be ineffective where the information is obtained solely from the confessional; and, lastly, that information about sexual abuse of children received during a religious confession is better addressed by existing non-statutory obligations. I will just invite your response as to whether that adequately reflects your position on this matter.

Archbishop COSTELLOE: Could you clarify the last point for me? I am not quite sure I have got that.

Hon NICK GOIRAN: The last point was information about serious sexual abuse received during a religious confession is better addressed by existing non-statutory obligations. I made that note in response to a dialogue, I think, Archbishop, between yourself and my colleague Hon Jacqui Boydell, where you indicated that there are some responsibilities. They are not statute law, as in Western Australian law, but there are some—I do not know how you would describe it, and whether it would be appropriate to be described as canon law, moral law or what the appropriate definition is, but certainly people in your tradition would have obligations.

Archbishop COSTELLOE: Yes, that is correct. The other points, yes, you have understood correctly.

Father ABDELMALEK: I agree on this summary, thank you very much. I remember now what I wanted to say, if I may? Excommunication, in the Orthodox understanding, is a sentence of death. Any priest who receives this sentence of death would feel horrible. Any person who received this sentence of death would feel horrible. Why is it a sentence of death? Because excommunication is not, you know, being deprived from the holy communion—you are deprived from being in eternity, in eternal life, so you will die in your sin. It is more than a sentence of death. If a genuine penitent person is coming and heard this, he of course would not be happy. But, again, a criminal, a repeating offender, would not care much because he lives in the sin. But for a priest to be excommunicated, we are actually sentenced to be out completely of the life he enjoys and he loves and he is compassionate about, you see. You do not want to put us, as clergy, in this position—dead or mandatory reporting in confession.

The CHAIR: Okay. That brings us to the end of our time, rather than our questions, because I think we could probably do another couple of hours quite easily. However, your responses to the questions we have had time to ask have been very comprehensive, and so if you would accept that we will now look at any remaining information we might want to come back to you on, we will write to you when we send the transcript of evidence. Reverend Father, I think at one stage you referred to a document that you were happy to share with us. Did you want to table that?

Father ABDELMALEK: This is the submission, so probably I have got the submissions already emailed.

Hon SIMON O'BRIEN: You had a policy or guidelines.

Father ABDELMALEK: Yes, the policy of child and youth service, if you would like to keep that.

The CHAIR: Did you want to table that? That would be, I think, welcomed by the committee.

Father ABDELMALEK: Yes, please.

Archbishop COSTELLOE: I was just going to indicate, because there were some other questions that we have not addressed, I have also brought some material that I would like to table, particularly around the last question on the list around the safeguarding project of the Catholic Church. I think it is important because it simply points out that the church in 2020 is not the church of the 1950s,

and much has been done and much continues to be done. It is not just empty words for us to say that the safety and wellbeing of children and young people is a major priority in the church of today.

[1.10 pm]

It would be very unfair, I think, to suggest that because we maintain this particular position around this particular issue of confession that somehow or other we are not as committed—and I would think we are at least as, if not more than most other organisations—to the safety and wellbeing of children and young people. I would like to table those. We have brought enough copies I think for everybody. There is also some evidence from a survivor of the value that the confidentiality of the confession provided him in dealing with his own issues about abuse. You may not be interested in this, but some time ago I issued a letter to the Catholic people of Perth, not Western Australia, about this matter, so we have provided copies of that also.

The CHAIR: Thank you for that. I will not ask to you identify every single document, because I see it is a bag. Tracey is now staggering under the weight of that. Thank you. That brings us to the end of our hearing, which I will now formally close by thanking you for attending today. We can end the broadcast there.

A transcript of this hearing will be forwarded to you for correction. If you believe any correction should be made because of typographical or transcription errors, please indicate these corrections on the transcript. Errors of fact or substance must be corrected in a formal letter to the committee. When you receive your transcript of evidence, the committee will also advise you when to provide your answers to questions taken on notice. I think there was just one today, but we will also let you know if there is other information that we would request you to provide us. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thanks very much for coming in this morning. We appreciate your time.

Father ABDELMALEK: Thank you.

Archbishop COSTELLOE: Thank you very much everybody; we appreciate it very much.

Hearing concluded at 1.11 pm
