

24 July 2020

Legislation Committee
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Legislation Committee

I refer to the Children and Community Services Amendment Bill 2019 (“**the Bill**”). In particular, I refer to the proposed inclusion of section 124BA, which imposes a legal obligation on Ministers of Religion to report an alleged incident of child sex abuse, even if such information is disclosed during a Confession. I write this submission as a practising Catholic who lives in Western Australia and is concerned about the adverse impacts this Bill will have on freedom of religion and freedom of conscience.

The Sacrament of Confession

The Sacrament of Confession provides a safe space in which Catholics can confess their sins directly to God, through a Priest who acts as an intermediary. Similar to the concept of Legal Professional Privilege which maintains the confidentiality of the lawyer-client relationship, the confidential nature of the Sacrament of Confession ensures parishioners can fully and frankly discuss their sins with a Priest. Catholics attend a Confession in order to have their sins absolved. However, in order to have sins absolved, the person making a confession must:

- a. be genuinely sorry for their sins;
- b. frankly disclose their sins; and
- c. be willing to do penance and make amends for their sins.¹

Church teaching states a person must be prepared to make amends for the sins they have committed prior to being forgiven.² A person who, during a Confession, discloses they have abused a child is likely to be told to immediately cease the abuse and either report their crimes to the police themselves, or disclose their crimes to the Priest outside of Confession so the Priest can report the abuse. A failure to be willing to make amends can then result in the Priest refusing to give the absolution.

If Priests are compelled to report abuse which has been disclosed to them during a Confession, the relationship of trust and confidence that exists between parishioners and Priests will be removed. Abusers will likely not confess their crimes – thereby removing the opportunity for them to be encouraged to cease the abusive behaviour and have their crimes reported to the police. In

¹ Catechism of the Catholic Church, n. 1490.

² Catechism of the Catholic Church, n. 1459.

addition, survivors of abuse will be discouraged from seeking guidance from their Priest as to how to deal with their trauma out of fear that what they say will not remain confidential.

The Confessional Seal is Inviolable

Canon 938.1 of the Code of Canon Law states “The sacramental seal is inviolable; therefore it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason”. Therefore, a Priest is not allowed to break the Confessional Seal for any reason, even if the reason is to aid the cause of justice. If a Priest were to directly violate the Confessional Seal, Canon 1388.1 of the Code states the punishment is automatic excommunication.

On 21 July 2019, the essential nature of the Confessional Seal to the Catholic Faith was reaffirmed by the Pope’s approval of the Apostolic Penitentiary’s *Note on the Importance of the Internal Forum and the Inviolability of the Sacramental Seal*. In particular, this document states:

- a. the Priest, in fact, becomes aware of the sins of the penitent not as man, but as God, to such an extent that he simply “does not know” what he was told during confession, because he did not listen to him as a man but, precisely, in the name of God; and
- b. any political action or legislative initiative aimed at breaching the inviolability of the Confessional Seal would constitute an unacceptable offence against the Church and a violation of religious freedom.

The fact that the Seal of Confession cannot be broken is enshrined in the laws of the Catholic Church. Only the Pope has the authority to make changes to the Church’s laws, and Priests are unable to implement practices which result in a breach of Church laws.³

Conclusion

The Sacrament of Confession provides an opportunity for Priests to:

- a. encourage abusers to cease their abusive behaviour and report their crimes to the police; and
- b. counsel victims of abuse who wish to discuss their trauma in a confidential setting.

There is no evidence to suggest that compelling Priests to break the Confessional Seal will protect children. However, it is clear that section 124BA of the Bill will merely serve to transform the role of a Priest from a servant of God to an agent of the State by forcing Priests to violate Church teachings and face excommunication. The ultimate result will be to prevent Priests and parishioners from freely practising their religion and exercising their freedom of conscience.

³ 1983 Code of Canon Law, Canon 331.

Due to the impact the Bill will have on freedom of religion and freedom of conscience, the Bill should not progress any further in the Parliament. The Government of Western Australia should instead consult and work collaboratively with the Catholic Church to identify any necessary changes that are within the Church's power to implement.

Thank you for considering my submission.

Faithfully,

Bianca Cobby