

Submission from



To the

Legislation Committee of the WA Legislative Council

concerning the

Children and Community Services Amendment Bill 2019

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Introducing Australian Christian Lobby

ACL is a grassroots movement made up of over 175,000 individuals who seek to bring a Christian influence to politics and the wider community. ACL is non-party partisan, non-denominational. In Western Australia we have approximately 15,000 active supporters.

Our objective is to see Christian principles and ethics accepted and influencing the way we are governed, do business and relate as a society. We want Australia to become a more just and compassionate nation.

1. Our interest in this matter:

As an organisation we have taken a major interest in issues of religious freedom. We have been a major player in the consultations with the Federal Government in the fine tuning of the draft exposures of the Religious Discrimination Bill and continue to engage with government on this matter.

We maintain that religious freedom is a basic human right, which should not be traded off as being less important than other human rights.

Our major concerns with several provisions in the Children and Community Services Amendment Bill 2019 relate to:

- a. The unintended consequences that mandatory reporting of child sexual abuse will have for the **adult** survivors of childhood sexual abuse.
- b. The issue of religious freedom for those who hold to the Catholic and the various Orthodox forms of Christianity, which hold to the 'seal of the confession'.

However, we wish to first highlight several other serious concerns:

3. The Lack of Consultation

We make the observation that there has been an unacceptable lack of consultation with the faith communities that will be affected by including ministers of religion in the mandatory reporting provisions of the Bill.

Our communication with leaders in the 8 Orthodox Church communities and the Catholic Church in Western Australia revealed that there had been **no consultation whatsoever with these churches**. In fact, only one of the Orthodox church leaders was aware of the legislation being before parliament. It is our understanding that it is normal practice for governments to consult with stakeholders when legislation is formulated, so as to ensure that the drafters of the legislation understand the context in which the legislation will operate, so as to understand the impact the legislation might have and to avoid unintended consequences.

We note that the Minister stated in her second reading speech that including ministers of religion under the mandatory reporting provisions is 'consistent' with Recommendation 7.3 of the Royal Commission. This is true. But it is particularly galling for church communities, that they were not deemed worthy of being consulted in any way, while the other 4 categories of persons which the Royal Commission recommended should be included in the mandatory reporting provisions, were not included in the Bill, because the Government intends to take the time to consult with them!

One assumes that the Government wishes to consult with the employer groups and professional organisations representing the other four categories because of concerns about potential unintended consequences.

What is particularly disturbing is that the CALD Coptic, Ethiopian, Greek, Romanian, Russian, Serbian, Syrian, Ukrainian Orthodox Church communities and the Catholic Church were not consulted, even though the Government was aware that this Bill will require ministers of religion of these denominations to break the seal of the confession, which is in violation of the universal church law under which they are governed. Thus, if a priest complied with the requirements of the legislation to break the seal of the confession, he would face instant dismissal from his role. To not consult in such a situation is high handed and disrespectful to say the least, especially given that the Australian leaders of these churches do not have the power to change their universal church laws.

4. The failure to include the other professions in the mandatory reporting requirement

If "child safety is paramount" as the minister stated in her second reading speech, then it is hard to fathom why the government would want to delay including out of home care workers, youth justice workers, early childhood workers and registered psychologists and school counsellors, as recommended by the Royal Commission. Given the limited number of sitting weeks left before the parliament is prorogued, failure to include these four groups in the legislation will inevitably delay these professions being subject to mandatory reporting requirements for at least a year.

We wish to point out that over 50% of all the sexual abuse cases reported to the Royal Commission occurred outside of religious institutions. (Vol 16, Bk 1, p 13). There is no valid or rational reason for only including one of the five categories of persons in the Bill.

Simply singling out ministers of religion, without any consultation, has the hallmarks of virtue signalling rather than making child safety paramount as claimed by the minister in her second reading speech.

Failure to consult with the CALD Orthodox communities and the Catholic communities but making arrangements to consult with the other groups in 2020, is to treat these communities as second-class citizens. They would have every reason to feel that they have been unjustly singled out.

5. The negative impact that the mandatory reporting of historic child abuse will have on adult survivors of childhood sexual abuse

The Children & Community Services Act 2004 (current law) Section 124 (1)(b) covers mandatory reporting of both **ongoing** child sexual abuse, and **historical** child sexual abuse.

124B. Duty of certain people to report sexual abuse of children

- (1) A person who —
 - (a) is a doctor, nurse, midwife, police officer, teacher or boarding supervisor; and
 - (b) believes on reasonable grounds **that a child** — [emphasis added]
 - (i) has been the subject of sexual abuse that occurred on or after commencement day; or [20 Oct 2004]
 - (ii) is the subject of ongoing sexual abuse;and
 - (c) forms the belief —
 - (i) in the course of the person's work (whether paid or unpaid) as a doctor, nurse, midwife, police officer, teacher or boarding supervisor; and
 - (ii) on or after commencement day,

must report the belief as soon as practicable after forming the belief.

Penalty: a fine of \$6 000.

Section 124B(1) (b)(i) makes no distinction between whether the abused person at the time of disclosure is still a child, or an adult. We believe that for reasons outlined below, different provisions should apply for situations when an **adult** survivor of childhood sexual abuse discloses, than when a child discloses historical or current abuse.

We believe that if ministers of religion are to be obligated to report disclosures by adult survivors of child sexual abuse, it will have detrimental and unintended consequences for many adult survivors of childhood sexual abuse.

For this section I will write in the first person. The reason for this is that as a minister of religion, I undertook significant counselling training and gained considerable experience (1993- 2005) in counselling adult survivors of childhood sexual abuse. I have walked with victims through their dark valleys in their journey of recovery, taken their calls late at night when they felt suicide was the only way out, and been able to talk them through those dark valleys and bring them into renewed hope that the sun would shine again one day.

Adult victims of childhood sexual abuse experience profound shame around their abuse. Many have never divulged to anyone that they have been abused. Through my pastoral work and the way I conducted Sunday services, various adult survivors came to trust me and to see me as an empathetic person, to the point that I was the first person to whom they disclosed that they had been sexually abused in childhood. It took enormous courage for them to do this. Doing so left some of them physically, emotionally and mentally exhausted for the days following. The reason they were willing to disclose to me was that they trusted me. They felt that at long last they had found a 'safe' person to talk to. They knew that I would never talk to anyone about their 'secret' without **their** permission.

These were all women over the age of 40, who had carried their burdens for 30 or more years. They had always felt so disempowered, that they – for all those years – could not get themselves to talk about it to anyone. Finding in me a ‘safe’ person – a person they could begin to talk to about their abuse - was the beginning of their journey towards recovery. It was usually over a period of months, that they began to be able to deal with their sense of shame, self-loathing etc to the point where they were ready and willing to -as they put it – take the risk of seeking further specialised professional help beyond what I could offer them.

In preparing this submission, I sought out one of the survivors of childhood sexual abuse who first disclosed their abuse to me. I asked her (6/07/2020): *If you had known that if you disclosed your abuse to me, I would have to immediately report your name and details to the Dept of Child Protection or the Police, would you have felt free to disclose your abuse to me?* Her whole upper body shook in an expression of horror. She went on to explain: *As a victim you feel so ashamed and powerless. The law should allow the victim to decide when it is time to report to the authorities. Otherwise you just disempower the victim all over again! There is no way I would have disclosed to you under those circumstances.*

I then asked her: If you had **not** known that such a law was in place, and I had to say to you after you disclosed your abuse to me, that I will now need to report this to the authorities, how do you think you would have felt? With tears welling in her eyes, she said: *It would have felt like being abused all over again. I would have felt so betrayed. I think I might have committed suicide. I had been that close to committing suicide over the years. That would have tipped me over the edge.*

I appreciate that the section 53 (b)(i) is well intentioned. But the requirement that any childhood sexual abuse that a minister becomes aware of that occurred on or after 20th Oct 2004, must be reported to the authorities as soon as practical, will have dangerous unintended consequences. It will have the opposite effect of what the Royal Commission and the Government intended. It will deny adult survivors of child sexual abuse the opportunity to treat a minister of religion as a ‘safe’ person, and thus take away one profession that has allowed numerous adult survivors of child sexual abuse to take their first tentative steps towards recovery.

Many adult survivors begin their journey of recovery by disclosing to a minister of religion. If the Bill is passed in its current form, (i.e. with Section 53(b)(i) as it stands), it would almost guarantee that adult survivors will no longer feel they can safely disclose to a minister of religion. Similarly, any profession which will be subject to mandatory reporting obligations in future legislation, will find that adult survivors will not disclose to them. In addition, any adult survivor who is **not** aware of the provision of Section 53(b)(i) will feel utterly betrayed when the minister of religion informs them of this obligation.

We therefore urge the Committee to recommend an amendment to the legislation, which would empower **adult** survivors of childhood sexual abuse to stay in control of their story, and have the right to decide when they wish to report their sexual abuse to the authorities. We believe this should apply to all adult survivors who disclose to any of the professions (not just ministers of religion) which have mandatory reporting obligations under the legislation.

One possible way of addressing this would be to insert the words '*person who is still a*' between the words '*a*' and *child*, so as to read:

- (b) believes on reasonable grounds that a *person who is still a* child —
- (i) has been the subject of sexual abuse that occurred on or after commencement day; or
 - (ii) is the subject of ongoing sexual abuse;

This would ensure that ministers of religion (and other professions with mandatory reporting obligations) would have the obligation to report any disclosure made by a child. To knowingly leave a child in a situation of on-going sexual abuse would be reprehensible. Likewise it is essential that a child that has disclosed abuse, is given timely access to the professional help it needs to deal with the consequences of the trauma and to ensure that further abuse does not take place, and the abuser brought to justice.

The suggested amendment would ensure that children are still protected, but would allow the adult survivors of childhood sexual abuse to be spared the disempowerment that would result from reporting their situation to the authorities before they are ready, and thus prevent the legislation from having the undesirable and damaging impact on survivors of childhood sexual abuse as outlined above.

We believe it is important that adult survivors of childhood sexual abuse be encouraged to report their abuse to the authorities as soon as possible, especially if the perpetrator is still alive, and thus would have the potential to abuse others.

A clause could be added between 124B (1) and (2) that would read something like:

A person (as listed in 1(a)) who believes on reasonable grounds that a person who is now an adult, has been the subject of childhood sexual abuse that occurred on or after commencement day shall take reasonable steps to encourage the person to report their historical sexual abuse to the CEO or person delegated by the CEO.

In my counselling of adult survivors of childhood sexual abuse, I always sought to empower them to come to the point where they felt strong enough to talk to police about what happened to them, especially if their abuser(s) were still alive. I always impressed on them the fact that if the abuser is still alive, that abuser may still have access to children, and thus able to abuse others – something the survivors always understood, and this was often the only thing that gave them the courage to report their abuse to the police. But for police to try and interview a survivor who is not ready to talk, only serves to re-traumatise the survivor.

We believe that amending the Bill as suggested, will not diminish the protective effect of the Bill for children, and at the same time remove the damaging unintended impact on adult survivors of childhood sexual abuse.

6. Requirement to break the seal of the confession - Section 53

Section 53. Section 124BA inserted

After section 124B insert:

124BA. Provisions for ministers of religion

(1) In this section -

religious confession means a confession made by a person to a minister of religion in the minister's capacity as a minister of religion in accordance with the tenets of the minister's faith or religion.

(2) For the purposes of section 124B(1)(c)(i), a minister of religion who forms a belief on the basis of information disclosed to the minister in the minister's capacity as a minister of religion is taken to form the belief in the course of the minister's work.

(3) A minister of religion is not excused from criminal responsibility for an offence under section 124B(1) on the grounds that

(a) the minister's belief is based on information disclosed to the minister during a religious confession; OR [emphasis added]

(b) disclosure of the minister's belief or information on which the belief is based is otherwise contrary to the tenets of the minister's faith or religion.

6.1 Conflict with the International Covenant on Civil and Political Rights

This section does not cause any difficulty for ministers of protestant churches as these churches do not have a sacrament of confession. However, it poses a major problem for Catholic and the Culturally and Linguistically Diverse (CALD) Orthodox church communities in Western Australia.

For the priests of these churches, if they were to break the seal of the confession, they would face instant dismissal from their role as a priest.

Section 53 (3) (a) thus presents priests of the Catholic and Orthodox faiths with an unacceptable choice: Obey the law of the land and face instant dismissal, or obey (what they understand to be) a higher law, namely that of God.

Religious freedom is a universally recognised human right. The International Covenant on Civil and Political Rights states:

Article 18:1 Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, *to manifest his religion or belief in* worship, *observance, practice* and teaching.

Article 18:3 Freedom to manifest one's religion or beliefs may be subject only to such limitations as are *prescribed by law and are necessary to protect public safety, order, health, or morals* or the fundamental rights and freedoms of others.

Under the terms of this covenant, a government can only legislate to limit religious freedoms if the reason for doing so meets one or more of the above criteria. For the government to propose legislation that would criminalise a religious practice that has been in place for nearly 2 millennia, it must surely have compelling reasons.

Under the terms of the ICCPR Article 18, it would appear to us that the only basis on which a priest could be required to break the seal of confession, is if it can be demonstrated that it would enhance public safety.

We understand that the intention of Section 53(3)(a) is twofold:

- a. When a paedophile confesses to a priest that he/she has committed child sexual abuse, the paedophile must be reported to the police and hopefully prosecuted and thus less likely to offend again, and thereby protecting other children.
- b. When a child discloses in the context of the confessional to having been sexually abused (or that a friend has been so abused), the priest must report this to the authorities, so that the perpetrator may be identified and the victim(s) can be offered the professional help they need to deal with the trauma they have experienced.

At first glance these intentions seem reasonable and even laudable. But closer examination reveals that Section 53 does not in fact enhance public safety, as outlined below:

6.2 Paedophile confession:

It is our understanding that in the current context where mandatory reporting by ministers of religion is not yet law, it is the lived experience of the vast majority of priests that they never hear such a confession of child sexual abuse from an abuser. In those exceedingly rare occasions that a priest does hear such a confession, the priest is not obligated to offer absolution. It is our understanding that in these exceedingly rare situations, absolution is normally made conditional on the person confessing reporting to police (accompanied by the priest if desired).

However, if a paedophile knows that the priest must report such a confession to the police, it will guarantee that these exceedingly rare events will never again take place. Thus a priest will no longer be in a position to in anyway influence a paedophile to confess to the authorities.

While we recognise that the Royal Commission recommended this provision, the lived experience tells us that requiring a priest to break the seal of the confession will have zero public safety benefit, and therefore it is hard to envisage how this provision could be justified under the terms of the ICCPR, to which Australia is a signatory.

6.3 Child Confession

We understand that on rare occasions children, in the context of confession, disclose that they, or a friend, have been, or are being sexually abused. The Royal Commission noted that Catholic church leaders were not clear on whether a child disclosing abuse in the context of confession, constitutes a confession of sin, and thus would be considered to be covered by the seal of confession. This will need consideration by the Vatican and the heads of the various Orthodox Churches based outside of Australia. If a priest were to err on the side of caution and consider it to be covered by the seal of confession, the priest would not be free to initiate further discussion with the child after the confession. However, the priest is free to gently urge the child during confession that he/she should continue discussing the issue after confession. If the child continues to speak about it after confession, the priest is free to report it to the authorities. Indeed, as children see the priest as an authority figure, one would think it would not be too difficult to coax a child into speaking about it after the confession, or have the child speak to one of the trained 'go to' persons that have been appointed in every parish to deal with such matters, or to another adult that the child trusts.

Had the government engaged in consultation with the church leaders before drafting the legislation, it would have become apparent that more time is needed for consultation, just as the government acknowledges is needed before the other 4 professional groupings can be brought into the mandatory reporting system.

6.4 Conclusion re Section 53 (3) (a)

From the above evidence it is highly unlikely that if Section 53(3)(a) is enacted that a priest will ever be faced with having to make the decision of defying the law of the land or the two millennia old church law of the seal of the confession. The reasons being that paedophiles will never again confess the sin of sexually abusing a child, and children who speak of being abused in confession, can usually be persuaded to talk to the priest about it again afterwards, or be persuaded to talk to one of their parents or other trusted adult.

The evidence above also highlights that there is **no demonstrable public safety benefit** from enacting Section 53(3)(a).

The government has failed to establish that there is any public safety benefit arising from this infringement on the religious freedom of Orthodox and Catholic faith communities, (as required under the provisions of ICCPR Art 18). Hence **we recommend that Section 53 be deleted at this time, and this issue considered again after full consultation with the affected churches and the other 4 professional groupings recommended by the Royal Commission for inclusion in mandatory reporting provisions.**

This would also give time for the Vatican and the various overseas bodies of the Orthodox Churches to clarify whether a child speaking of sexual abuse in the context of confession, is to be deemed as being a confession.

7. Summary of Recommendations

Deferral of Section 53 (Ministers of Religion be included with the other 4 professions)

7.1 That the inclusion of ministers of religion in the list of professions that have mandatory reporting obligations be deferred until full consultation with churches and the other 4 professions referred to in Royal Commission Recommendation 7.3 has occurred

If the Committee does not support 7.1 (above), at the very least then the following recommendation be adopted:

The obligation to break the seal of the confession be deleted

7.2 That Section 53(3)(a) be deleted as the government has not established that there is a public safety benefit as required under Article 18 of the ICCPR, and this matter be subject to a consultation process with the Catholic and Orthodox Churches at the time the other 4 professions are engaged in consultations.

Exclusion of Adult survivors from mandatory reporting provision

7.3 That the Bill be amended to exclude disclosure by **adult** survivors of childhood sexual abuse from the mandatory reporting provisions, to empower the adult survivors of childhood sexual abuse to be in control of their story and of when they report their sexual abuse to the authorities.

Adult survivors be encouraged to report

7.4 A clause be added between 124B (1) and (2) Children and Community Services Act 2004 that reflects the following intent:

A person (as listed in 1(a)) who believes on reasonable grounds that a person who is now an adult, has been the subject of childhood sexual abuse that occurred on or after commencement day shall take reasonable steps to encourage the person to report their historical sexual abuse to CEO or person delegated by the CEO as soon as possible.

I would be pleased to have the opportunity to meet with the Committee to speak to this submission.

Respectfully submitted

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Australian Christian Lobby