

## **Submission regarding the Inquiry to the Children and Community Services Amendment Bill 2019 (Bill 157)**

To the Members of the Standing Committee on Legislation,

As a practising Roman Catholic and student for the priesthood in the Archdiocese of Perth, I am writing to present the issues I find with the Children and Community Services Amendment Bill 2019 (herein 'the Bill').

### **Concerning Clause 51, Section 124A<sup>1</sup>**

Firstly, the Bill fails to provide a comprehensive approach to child protection in proposing to legislate mandatory reporting for only one of the five professions recommended (as a minimum) for mandatory reporting in the Royal Commission Final Report (herein Final Report).<sup>2</sup>

Legislation which prioritises child protection should be reflective of and proportionate to the reality and risks where children are most exposed or vulnerable to adults, prioritising a comprehensive approach. Yet, the Bill seeks to expand the current professions for which mandatory reporting applies (doctors, nurses, midwives, police officer or boarding supervisor)<sup>3</sup> only to 'ministers of religion' to the exclusion of out-of-home care workers, juvenile justice workers, early childhood workers, and registered psychologists and school counsellors – professions specifically outlined in Recommendation 7.3 of the Final Report.<sup>4</sup>

If for some reason, mandatory reporting cannot be required of all appropriate professions at this stage, it would be reasonable to expect that professions with most regular contact with children should be prioritised for mandatory reporting. Of the five professions which the Final Report recommends mandatory reporting is to be extended to, 'ministers of religion' in today's context (at least in the context of the Catholic Church) do not have the most regular contact with children.

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<sup>1</sup> Clause 51, Section 124A. "Children and Community Services Bill 2019," WA Parliament, 2019. 33.

<sup>2</sup> Recommendation 7.3. Royal Commission into Institutional Responses to Child Sexual Abuse, "Final Report: Preface and Executive Summary," Commonwealth of Australia, 2017. 29.

<sup>3</sup> Note that, this section specifies reporting of abuse recounted by children only and does not mention reporting in the case of abuse recounted by perpetrators. Division 9A. "Children and Communities Services Act 2004," WA Parliament, Version 05-b0-00, 9 July 2020. 102-112.

<sup>4</sup> Recommendation 7.3. "Final Report: Preface and Executive Summary," 29.

## Concerning Clause 53, Section 124BA<sup>5</sup>

Secondly, the Bill seems to disproportionately burden Catholic and Orthodox Christians by presenting a false dichotomy between the protection of children in their institutions and the religious commitment to the Seal of Confession.

The Bill specifies the exclusion of any exemptions regarding mandatory reporting of content (related to child sexual abuse) heard under the 'Seal of Confession' in the context of religious confession.<sup>6</sup> While the inclusion seeks to implement Recommendation 7.4 of the Final Report<sup>7</sup> and seeks to ensure standards of mandatory reporting are universally applied (at least to the specified professions), the Bill fails to reflect any genuine consideration of due concerns of key stakeholders.

The application of the Seal of Confession in an absolute manner is integral to the practice of religious confession particularly in the Catholic and Orthodox Churches. For religious ministers and lay Christians belonging to these Churches, this Bill presents an intrusion into legitimate religious practise which has been maintained for centuries and at great cost.<sup>8</sup> Furthermore, this Bill would also cause serious issues for survivors of sexual abuse who find in religious confession, marked by the Seal of Confession, a crucial avenue of recovery.

Quoting James Parker, a survivor of sexual abuse who now works with other survivors and survivors' networks:

“What most of society does not seem to have realised, and even most churchgoers, is that victims and survivors often visit the confessional, whether they are Catholic, Orthodox, non-Catholic, non-Orthodox, yes, even non-Christians. They do this because the seal of confession presents as a vital lifeline that aids recovery.”<sup>9</sup>

Often it is insinuated that the Catholic Church's defiance in maintaining the Seal of Confession in the face of mandatory reporting laws is seen as the Church putting its

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<sup>5</sup> Clause 53, Section 124BA. “Children and Community Services Bill 2019,” 35.

<sup>6</sup> Clause 53, Section 124BA. “Children and Community Services Bill 2019,” 35.

<sup>7</sup> Recommendation 7.4. “Final Report: Preface and Executive Summary,” 29.

<sup>8</sup> William Saunders, “The Seal of the Confessional,” Catholic Education Resource Center, accessed 16 July 2020, <https://www.catholiceducation.org/en/religion-and-philosophy/catholic-faith/the-seal-of-the-confessional.html>.

<sup>9</sup> James Parker, “How the seal of confession can aid child sex abuse victims,” Mercatornet, 22 July 2020. <https://mercatornet.com/how-the-seal-of-confession-can-aid-child-sex-abuse-victims/64898/>

interests before children again, or as 'the religious' making demands for privileges when everyone should just be following the same rules. Except, what many people don't realise is that the Seal empowers survivors of sexual abuse by providing the kind of confidentiality, anonymity and non-intrusiveness which can't be accessed anywhere else, let alone it is available at no financial burden and is readily available at any Catholic or Orthodox parish.<sup>10</sup>

The practise of religious confession (in conjunction with the Seal of Confession) has likely been an avenue of recovery for survivors more than it has been a refuge for perpetrators (if they ever sought it in the first place). If so, it assists the potential conviction of offenders rather than abetting them.<sup>11</sup> However, the currently proposed Bill would outlaw this avenue for survivors in Western Australia, placing pressure on them to report instances of sexual abuse for which they are not mentally or emotionally ready to disclose.

Removing this avenue for recovery is all the more unjustifiable because, in practise, this proposal can have no meaningful consequence in regards to perpetrators of abuse, since they would be deterred from confessing, negatively impacting only survivors and narrowing alternatives for recovery.

This position must not be mistaken as advocating for institutional silence regarding child sexual abuse in general. The Royal Commission revealed the extent of hurt, damage, and injustice which such scandal-avoidance behaviour perpetuated to the shame of many institutions, not least the Catholic Church. However, mandatory reporting and deference of matters to police is already internally mandated in the Catholic Church for all clergy members, workers or volunteers,<sup>12</sup> and externally enforced mandatory reporting is to be welcomed (such as that outlined in Recommendation 7.3 of the Royal Commission Final Report). However, self-serving motivations for secrecy and silence (ie. historical inaction and cover-ups) should not be confused with the legitimate commitment of the Church to the Seal of Confession, and the healing which that religious practise seeks to promote, and which safeguards the penitents freedom above-all. The former is an absolute betrayal of the

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<sup>10</sup> James Parker, "How the seal of confession can aid child sex abuse victims."

<sup>11</sup> James Parker, "How the seal of confession can aid child sex abuse victims."

<sup>12</sup> For Mandatory Reporting see: National Committee for Professional Standards, *Integrity in Ministry*, updated 31 July 2015, 14. National Committee for Professional Standards, *Integrity in Service*, updated 31 July 2015, 5. For Mandatory Reporting and deference to police see: National Committee for Professional Standards, *Towards Healing*, updated January 2016, 17-18. These documents are available from [http://perthcatholic.org.au/Organisations\\_Services-Professional\\_Standards\\_Office.htm](http://perthcatholic.org.au/Organisations_Services-Professional_Standards_Office.htm)

trust of victims (and their families) and perpetuates injustice (against the intention of survivors to pursue resolution and justice), while the latter empowers survivors and enables them to move forward as and when they are prepared to do so. The Seal of Confession does not bind the penitent to secrecy but only binds the priest (or anyone who overhears the confession (ie. translator) to respect the absolute right of the penitent to control the way in which they decide to disclose the deepest matters of their conscience. In the case of a survivor, this is the ultimate appeal of the Seal of Confession as a means for recovery.

Any legislation must take into account the legitimate concerns of all stakeholders – both Church leaders on the theological reasons for which, in principle, the Seal of Confession cannot be compromised, and survivors of sexual abuse and their advocates, who find in religious confession and the Seal of Confession a place of healing and empowerment. The Bill as it stands does not reflect such considerations.

### **Ultimately Misdirected and Distracts from Effective Measures**

Lastly, the combined effect of emphasising a) the Bill's extension of current legislation to 'ministers of religion' (only), and b) the exclusion of any exemptions for the 'Seal of Confession' as central to the Bill perpetuates the false idea that the success of child protection as it stands in Western Australia depends largely on the compliance of all 'ministers of religion' and the breaking of the 'Seal of Confession'. Indeed, compliance by 'ministers of religion' are part of the solution, however, to celebrate this as a major stride in child protection while delaying proposals to hold accountable parts of society in which children are more at risk of sexual abuse, seems more an exercise in publicity than protection. It looks like an attempt to leverage popular sentiment against institutionalised religion at the expense of the Catholic and Orthodox Churches, unintentionally compromising survivors of sexual abuse who seek access to the kind of confidentiality which the Seal of Confession provides in religious confession.

This ultimately distracts from meaningfully addressing child safety, while outlawing an important avenue to recovery for survivors, and ultimately sends mixed messages about the Bill's priorities with regards to child protection.

I hope that the above considerations may contribute to a better discussion which takes into account the legitimate concerns of all stakeholders and leads to better outcomes for child protection in this state.

Yours sincerely,

Jason Yeap