

Open Letter: Inquiry into the Children and Community Services Amendment Bill 2019



02 July 2020

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Dear brothers in ministry and brothers and sisters in Christ,

Re: Inquiry into the Children and Community Services Amendment Bill 2019

On 1 July 2020 I was advised by the Hon Sally Talbot MLC that on 25 June 2020 the Legislative Council of Western Australia referred the Children and Community Services Amendment Bill 2019 to the Committee of Inquiry. This Committee will be chaired by the Hon Sally Talbot MLC and the current members are the Hon Nick Goiran MLC, the Hon Pierre Yang MLC and the Hon Simon O'Brien MLC. The Hon Jacqui Boydell MLC will be co-opted as a member.

The Terms of Reference are:

1. That the *Children and Community Services Amendment Bill 2019* be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 15 September 2020.

2. The Committee has the power to inquire into and report on the policy of the Bill.

The *Children and Community Services Amendment Bill 2019* proposes to amend the *Children and Community Services Act 2004* to implement recommendations of the Final Report of the *Royal Commission into Institutional Responses to Child Sexual Abuse* and a statutory review of the Act.

One of the main purposes of the amendments to the Children and Community Services Act 2004 is to introduce mandatory reporting of child sexual abuse for ministers of religion which includes "religious confession". The proposed amendment states:

"Section 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

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."

In short what this means is that any information disclosed to a priest during the course of Confession which leads the priest to believe that a minor is being sexually abused must be reported to the

authorities, irrespective of the wishes of the penitent. Failure to do so will constitute a criminal offence under the proposed amendment.

The Bill includes a number of amendments which relate to ministers of religion becoming designated mandatory reporters of child sexual abuse as detailed in Recommendation 7.3 the *Royal Commission into Institutional Responses to Child Sexual Abuse*. This is not limited to confession but to all aspects of a priest's ministry.

As part of its consultation, the Standing Committee on Legislation has invited me to provide a written submission on matters relating to the Children and Community Services Amendment Bill 2019. I will be taking up the Chair's invitation and will be lodging a submission by Friday, 24 July 2020 to the Committee of Inquiry.

My submission will be informed by my [Pastoral Letter](#) to the Archdiocese of Perth dated 18 May 2020 (Pastoral Statement). My Pastoral Letter outlined not only my views on these proposed amendments to the Children and Community Services Bill 2019 but also Catholic teaching and the fundamental theological reasons which underpin the Sacrament of Penance in our Catholic tradition.

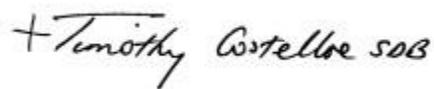
As outlined on the Parliament of Western Australia's website ([CLICK HERE](#)) individuals and organisations are invited to make submissions to the committee with the closing date for submissions being **Friday, 24 July 2020**. I invite you to consider lodging an individual submission or work with a group of parishioners and other interested people to lodge a joint submission. It is my hope that in doing so the widespread concerns of Catholics about this fundamental challenge to such an important aspect of our Catholic faith might be strongly communicated to our politicians.

This open letter has been made available across the Archdiocese of Perth through the eRecord of 2 July 2020 and on the Archdiocese of Perth's website. Information will also be distributed to Archdiocesan staff, Agencies, Catholic Education Western Australia, the University of Notre Dame, St John of God Health-Care and other members of the Archdiocesan community for their attention.

As I stated in my Pastoral Statement I remain fully committed to the safety of children and young people within the Archdiocese of Perth. Any person with allegations of sexual abuse by Church personnel should go to the police. Our Catholic Professional Standards Office stands ready to assist people to do so.

The sexual abuse of children and young people is an abhorrent crime wherever, whenever and by whomever it is perpetrated. I recommit the Archdiocese of Perth to its ongoing safeguarding initiatives that are in place across all our agencies.

Yours sincerely in Christ

A handwritten signature in black ink that reads "+ Timothy Costelloe SDB". The signature is written in a cursive style with a cross at the beginning.

Most Rev. Timothy Costelloe SDB
Archbishop of Perth
Catholic Archdiocese of Perth

Protect the Confessional Seal - Fact Sheet

Children and Community Services Amendment Bill 2019

General Information

1. The Amendment Bill introduces mandatory reporting of child sexual abuse for priests, even if the information is disclosed during a Confession.
2. The Bill is being reviewed by the Legislation Committee. Submissions are open till Friday 24 July 2020.
3. This brief Fact Sheet helps individuals and groups prepare submissions to the Legislation Committee.
4. Submissions should be **well-argued, well-referenced** and **factual**. Personal stories are also powerful. It is enough to concentrate on **just one point**, something that is **most important to you**. Just a few sentences can speak volumes. Be polite, do not attack a politician or the Government, just **address the issue**.
5. Go to the end of this Fact Sheet for some useful links and further information.

1. Survivors use the Confession to seek healing and justice.

Many survivors of child sexual abuse have said that the confessional remains the only safe place they can easily access without cost, to seek healing and support about their trauma.

“I was a suicidal teenager. I had no one to turn to who would let me talk at my pace and respect my need at that time for utter privacy. It was the kindness and empathy of a Catholic priest in the confessional that literally saved my life.”

James Parker, a child sexual abuse survivor

“One of the safest places I could turn to was my local priest under the Seal of Confession. If I’d thought the priest would ever tell anyone what I shared with him, then I’d never have gone to him. It feels as though politicians are now attacking me when I am the one who was wronged and hurt.”

SR, an 18-yr old child sexual abuse survivor

“We the abuse victims are being frightened away from going to confession. ... The thought of losing the security and safety of the Seal of Confession brings me to tears. Where else do I turn? Where else will provide me with what I need to begin the process to inner healing?”

SM, a 27-yr old child sexual abuse survivor

[To watch powerful short stories of how the Confessional Seal offers hope and healing to W.A. survivors, visit: [YouTube.com/TrueIdentityIntl](https://www.youtube.com/TrueIdentityIntl) and [Facebook.com/TrueIdentityInternational/](https://www.facebook.com/TrueIdentityInternational/)]

2. The Amendment Bill is limiting implementation of mandatory reporting to only one of the five groups recommended by the Royal Commission. There is a lack of consultation with key stakeholders.

The Royal Commission recommended mandatory reporting for five groups of professions, including psychologists, school counsellors and ministers of religion. In her speech to the Legislative Assembly on 28 November 2019,

Minister Simone McGurk stated a number of important facts:

- Of the five groups recommended by the Royal Commission, ministers of religion are the only group singled out by the Amendment Bill for mandatory reporting.
- That only a very limited consultation has been conducted, involving a number of Aboriginal organisations and 37 written submissions.

Mandatory reporting impacts most on the practice of the Confessional Seal in Catholic and Orthodox churches.

Many survivors currently use the Confession as a safe space for counselling, support and healing. The Catholic Church, Orthodox Churches and survivor groups have all not been contacted during the consultation process. The grossly inadequate consultation with key stakeholders will have serious unintended consequences.

3. The breaking of the Confessional Seal is a change that is not open to the Australian Catholic Church to make. The Holy See in Rome has that authority. The Royal Commission's Recommendation 16.26 has not been adequately explored.

The Royal Commission recommended that the Australian Catholic Church seeks clarification from the Holy See on “whether information received from a child during the sacrament of reconciliation that they had been sexually abused would be covered by the seal of confession”; and “whether absolution could and should be withheld if a person confessed to perpetrating child sexual abuse, until they report themselves to civil authorities”.

Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report: Volume 16, Religious institutions Book 1, p 77

The Seal of Confession is a universal church law that the Australian Church does not have the authority to alter. The Royal Commission's Recommendation 16.26 could afford the Australian Church a level of flexibility and the priest a level of discretion when confronted with the revelation of child sexual abuse during the Confession. It should form an important part of the consultation process between the Government and the Church.

4. Paedophiles very rarely confess their sin and crime in Confession. And if they do, the Confession presents an opportunity to reform the offenders.

“Anecdotally it seems that most priests have rarely, if ever, had the sin and crime of sexual abuse confessed to them. ... [Perpetrators] are unlikely to confess something about which they do not feel guilty.”

Pastoral Letter by Archbishop Timothy Costelloe SDB of Perth, 18 May 2020

5. Mandatory reporting places all Catholic and Orthodox priests in a dilemma, infringing on the free practice of religion

The Amendment Bill requires the bishops and priests to violate the law of the Universal Church, causing them to be automatically dismissed from their office according to church law. This places an unacceptably high cost on all bishops and priests in Western Australia, and in turn infringes on the free practice of religion in our State.

6. Existing and Other Possible Measures to Safeguard Children

The Catholic Archdiocese of Perth has implemented exemplary measures in the safeguarding of children. Its successful Safeguarding Programme has been adopted as a model across Catholic dioceses throughout Australia.

No other organisation outside the Catholic Church of Australia has as comprehensive and as large-scale a programme for the safeguarding of children. Instead of forcing the Church to implement mandatory reporting, which is beyond its power to do, the Government should instead consult and work collaboratively with the Church to implement and improve practices that are within the Church's power to implement.

Submissions must be lodged by midnight on **Friday 24 July 2020** either: via **email** to lclc@parliament.wa.gov.au,
in **writing** to *Legislation Committee, Parliament House, 4 Harvest Terrace, West Perth, 6005*
or by **submitting comments online** by following the prompts at www.parliament.wa.gov.au/subportal.