

Children and Community Services Amendment Bill 2019

Submission to the Standing
Committee on Legislation

20 July 2020

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our mission is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). knowmore receives funding from the Australian Government, represented by the Departments of Attorney-General and Social Services. knowmore also receives some funding from the Financial Counselling Foundation.

From 1 July 2018, knowmore has been funded to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme.

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Perth, Sydney, Melbourne and Brisbane. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 30 June 2020, knowmore has received 32,833 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 6,531 clients. More than a quarter (27%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. Almost a quarter (24%) of clients are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Our clients in Western Australia

knowmore has a significant client base in Western Australia — 13 per cent of our current clients reside in the state. We therefore have a strong interest in child protection reforms in Western Australia.

knowmore's submission

This section details knowmore's comments on the Children and Community Services Amendment Bill 2019 (the Bill), focusing on those provisions that relate to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

Comments on mandatory reporting obligations for ministers of religion

Extending mandatory reporting obligations to ministers of religion

A recurring feature of the institutional child sexual abuse examined at the Royal Commission was a complete failure by those within institutions — including a large number of religious institutions — to act on knowledge or suspicions of abuse. Many of our clients have told us that they complained to institutional staff about sexual abuse at the time that it was occurring, but their complaints were never followed up or referred to external authorities. Our clients have often reported that, as children, their complaints of sexual abuse were not taken seriously, were dismissed, or were simply not believed by those within the institution. This enabled the perpetrators to continue offending against the complainant, and possibly other children at the same institution or subsequent institutions, and reinforced the powerlessness of the victims to stop the sexual abuse.

Given our clients' experiences, knowmore considers that comprehensive and nationally consistent mandatory reporting obligations are critical for protecting children. Our view is that these not only assist in detecting and preventing child sexual abuse, but also make institutional staff more accountable for reporting abuse and create a more robust reporting culture within institutions. This is particularly important given the view expressed by many of our clients that those within institutions were more concerned about upholding the institution's reputation than protecting children from abuse.

For these reasons, knowmore is very pleased to see Western Australia acting on Recommendation 7.3 from the Royal Commission,¹ and we strongly support the amendments in Clause 52 of the Bill that will make ministers of religion mandatory reporters. As the Royal Commission noted, people in religious ministry interact with children in a variety of ways during their work, and are consequently in a position to detect and receive disclosures of child sexual abuse occurring in institutional, familial and other settings.² We echo the Royal Commission's conclusion that:

*extending laws concerning mandatory reporting to child protection authorities to people in religious ministry could therefore play a powerful role in preventing or intervening at an early stage in child sexual abuse cases.*³

We consider this particularly important given the "cultural, scriptural, hierarchical and other barriers to reporting" that the Royal Commission identified in religious institutions, which are likely to result in child sexual abuse otherwise being under-reported to child protection authorities.⁴

We note that extending mandatory reporting obligations to ministers of religion was well supported by many survivors who spoke to the Royal Commission, as well as by a number of representatives of religious

1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 7, Improving Institutional Responding and Reporting*, 2017, p. 100.

2 Royal Commission, *Final Report: Volume 7*.

3 Royal Commission, *Final Report: Volume 7*, p. 98.

4 Royal Commission, *Final Report: Volume 7*, p. 98.

institutions.⁵ We also note that these amendments will bring Western Australia into line with the majority of the other states and territories,⁶ helping to ensure children in Western Australia are afforded the same protections as children in other jurisdictions.

Related to this point, knowmore acknowledges the government's intention to conduct further consultations with respect to extending mandatory reporting obligations to the other groups identified by the Royal Commission in Recommendation 7.3.⁷ We note that phased approaches to the implementation of these reforms have also been adopted in other jurisdictions,⁸ and we acknowledge the importance of proper implementation and ensuring that new mandatory reporters have "a competent and thorough knowledge of their requirements".⁹ Nevertheless, we urge the government to prioritise these further reforms to fully align Western Australia with most of the other states and territories, which have already implemented Recommendation 7.3 in full.¹⁰

Ensuring that mandatory reporting obligations for ministers of religion apply in the context of religious confessions

knowmore strongly supports proposed section 124BA in Clause 53, which will ensure that religious ministers will not be excused for failing to comply with their mandatory reporting obligations because their belief that a child has been or is being sexually abused is based on information disclosed to them during a religious confession. In doing so, Western Australia will join the ACT, Tasmania and Victoria, where comparable provisions have already been introduced.¹¹ As noted in the Explanatory Memorandum, these reforms are consistent with Recommendation 7.4 from the Royal Commission,¹² which heard numerous examples of child sexual abuse being disclosed during confessions, by both perpetrators and victims, where no action was taken to alert child protection or other authorities or otherwise protect the victim from further abuse.¹³

The accounts of the many victims who made a disclosure of abuse during a religious confession are disturbing, but particularly illustrative of the need for these reforms.¹⁴ In many of these cases, the victim's disclosure during confession was the first and only time as a child that they had told someone about the abuse they had suffered. The failure of the priests in question to act appropriately on the information they were given meant that children remained at risk, and in some cases suffered more because of their

5 Royal Commission, *Final Report: Volume 7*.

6 Ministers of religion are mandatory reporters in every other state and territory except Queensland [see section 356(3), *Children and Young People Act 2008* (ACT); section 27(1), *Children and Young Persons (Care and Protection) Act 1998* (NSW); section 26, *Care and Protection of Children Act 2007* (NT); section 30(3), *Children and Young People (Safety) Act 2017* (SA); section 14(1), *Children, Young Persons and Their Families Act 1997* (Tas); and section 182(1), *Children, Youth and Families Act 2005* (Vic)].

7 Parliament of Western Australia Legislative Assembly (Ms SF McGurk), *Parliamentary Debates (Hansard): Fortieth Parliament, First Session*, Children and Community Services Amendment Bill 2019 — consideration in detail, 19 May 2020, pp. 2870–2872.

8 In Victoria, for example, Recommendation 7.3 was implemented by a series of amendments to section 182 of the *Children, Youth and Families Act 2005* (Vic) commencing between March 2019 and February 2020.

9 Parliament of Western Australia Legislative Assembly (Ms SF McGurk), *Parliamentary Debates (Hansard): Fortieth Parliament, First Session*, Children and Community Services Amendment Bill 2019 — consideration in detail, 19 May 2020, p. 2870.

10 Recommendation 7.3 has been implemented in full in the ACT, New South Wales, the Northern Territory, South Australia and Victoria.

11 Section 356(2), *Children and Young People Act 2008* (ACT); section 14(7), *Children, Young Persons and Their Families Act 1997* (Tas); section 184(2A), *Children, Youth and Families Act 2005* (Vic). Similarly, in South Australia and the Northern Territory, there are no exemptions in mandatory reporting laws relating to religious confessions.

12 Royal Commission, *Final Report: Volume 7*, p. 100.

13 Royal Commission, *Final Report: Volume 7*.

14 These have been identified from the narratives published by the Royal Commission based on accounts provided by survivors at the private sessions (<www.childabuseroyalcommission.gov.au/narratives>).

disclosures. This was graphically illustrated in the evidence of VG, a survivor who spoke to the Royal Commission about the abuse he suffered as a child at a Christian Brothers institution in Western Australia.¹⁵

VG

VG was born in Malta and was sent to Australia as a child migrant in the early 1960s. After spending his first night in Australia at the junior orphanage at Castledare, VG was taken to live at St Mary's Agricultural School at Tardun.

After about 6 to 12 months at Tardun, VG "was moved from the main dormitory into the working boys' section. This section was run by a Brother Simon, who had the worst reputation for beating boys."

One night, Brother Simon attempted to sexually assault VG. VG fought back and, when he started to run away, Brother Simon "grabbed my shirt and threw me to the ground. I then felt the buckle of a strap on my head. I don't remember anything after that." VG woke up in hospital, where he stayed for about six weeks. Upon returning to Tardun, VG was frequently beaten with a leather strap by Brother Simon.

VG disclosed the sexual abuse by Brother Simon in confession on two occasions, with terrible results.

"A priest used to come to Tardun to hear our confessions during what was called a 'retreat'. He was Maltese and I think he had a parish in Guildford or Bassendean. I thought confession would give me some solace so I told the priest what happened to me. However, when I told him, he chastised me and told me in Maltese that I was lying.

Not long after my confession, after lunch on the same day, I was called into the office. When I arrived, Brother Simon was standing there with a strap in his hand. He called me a troublemaker and a liar and got stuck into me with the strap. He didn't mention the priest, but I knew that he had been told about my confession.

I also tried to confess to Father Sullivan about what Brother Simon did to me. Father Sullivan told me that I had a dirty mind and that I must do penance for my purification...

It was probably only a month after my confession to him that Father Sullivan asked me to help him with things in the chapel. It was the first time I had been asked to help." In the chapel, Father Sullivan attempted to sexually assault VG. "I became tangled in the back of his robe and I grabbed one of his legs and he fell forward. I ran out of there and spent the night in the bush. I managed to get some food during the night. I was so scared that I didn't want to go back, but I did the next day because I was hungry and had nowhere else to go. I didn't go into the dining room in case Father Sullivan was there to say grace as he normally did.

At this point, my beliefs that had been taught to me since birth failed to make sense. This was a very low point in my young life. Nothing made sense to me anymore..."

Source: Adapted from Royal Commission, *Public Hearing Transcript — Case Study 11: Christian Brothers (Day WA14)*, 29 April 2014, Evidence of VG, pp. WA1594–WA1616, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Case%20Study%2011%20-%20Transcript%20-%20Christian%20Brothers%20-%20Day%20WA14%20-%2029%20042014.pdf>.

¹⁵ Several other survivors of abuse in Western Australian Christian Brothers institutions gave similar accounts of disclosing their abuse in confession — see the evidence of John Hennessey and Edward Delaney (Case Study 11: Christian Brothers) and the stories of Benny (www.childabuseroyalcommission.gov.au/narratives/bennys-story), Luca (www.childabuseroyalcommission.gov.au/narratives/lucas-story) and Arnold Douglas (www.childabuseroyalcommission.gov.au/narratives/arnold-douglas-story).

After some discussion during the Royal Commission’s hearings about whether the seal of confession would apply to a child’s disclosure about being the victim of sexual abuse,¹⁶ it was confirmed that the position of the Catholic Church in Australia is that the priest hearing confession is not free to follow up any such report, and can only seek to persuade the child to make a further report outside the confession (which of course may not be effective):

Disclosure by a child

When in the sacrament the child reveals he/she has been abused, the priest-confessor should advise the child to tell another responsible person, not the priest-confessor, outside of the sacrament what has happened. Due to the seal of confession the priest-confessor is not free to follow this up. The initiative rests with the child, so the conversation in the sacrament between the priest-confessor and the child needs to be understanding, compassionate and encouraging.¹⁷

Where a child discloses, it is inappropriate to place the “initiative” for further action on that child victim. Rather, every instance in which a child discloses sexual abuse during confession is an opportunity for intervention, for that information to be taken to the authorities to protect the child from harm and help bring the perpetrator to justice. Whether these circumstances arise frequently or not, there can be no question that the protection of children should be paramount. In light of the significant and repeated disclosures of child abuse made to priests in this context, as evidenced in survivors’ accounts to the Royal Commission, knowmore believes it is essential for religious ministers’ mandatory reporting obligations to encompass information about child sexual abuse received during a religious confession, as per section 124BA(3), paragraph (a). We note that these provisions are consistent with the principles concerning confessional privilege agreed to by the Council of Attorneys-General in 2019,¹⁸ and we welcome this approach. We also support the inclusion of paragraph (b), to overcome any other barriers to reporting that may arise because of the tenets of a minister’s faith or religion.

Comments on other amendments related to recommendations from the Royal Commission

We note that several other provisions in the Bill relate to recommendations from the Royal Commission’s final report on contemporary out-of-home care. In particular:

- Clauses 11 and 32, which contain key amendments intended to “build stronger connection to family, culture and country for Aboriginal children in care through working more closely with Aboriginal people and Aboriginal community-controlled organisations to better implement the Aboriginal child placement principle”,¹⁹ are relevant to Recommendation 12.20.²⁰

Recommendation 12.20

Each state and territory government, in consultation with appropriate Aboriginal and Torres Strait Islander organisations and community representatives, should develop and implement plans to:

- a. fully implement the Aboriginal and Torres Strait Islander Child Placement Principle

16 Royal Commission, *Public Hearing Transcript — Case Study 50: Institutional Review of Catholic Authorities* (Day 245), 9 February 2017, pp. 25138–25140.

17 Bishop Terence Curtin (Chair of the Australian Catholic Bishops Conference Commission for Doctrine and Morals), *Comments on the Sacrament of Confession Prepared for the Royal Commission for Panel 4.2*, 2017, p. 1.

18 Council of Attorneys-General, *Communique*, 29 November 2019, Adelaide, p. 2, <www.ag.gov.au/sites/default/files/2020-03/Council-of-Attorneys-General-communique-November-2019.pdf>.

19 Parliament of Western Australia Legislative Assembly (Ms SF McGurk), *Parliamentary Debates (Hansard): Fortieth Parliament, First Session, Children and Community Services Amendment Bill 2019 — second reading*, 28 November 2019, p. 9594.

20 Royal Commission, *Final Report: Volume 12, Contemporary Out-of-Home Care*, 2017, p. 334.

- b. improve community and child protection sector understanding of the intent and scope of the principle
- c. develop outcome measures that allow quantification and reporting on the extent of the full application of the principle, and evaluation of its impact on child safety and the reunification of Aboriginal and Torres Strait Islander children with their families
- d. invest in community capacity building as a recognised part of kinship care, in addition to supporting individual carers, in recognition of the role of Aboriginal and Torres Strait Islander communities in bringing up children.

- Clauses 14, 37, 43 and 45, which contain amendments to help better support care-leavers, are relevant to Recommendation 12.22.²¹

Recommendation 12.22

State and territory governments should ensure that the supports provided to assist all care-leavers to safely and successfully transition to independent living include:

- a. strategies to assist care-leavers who disclose that they were sexually abused while in out-of-home care to access general post-care supports
- b. the development of targeted supports to address the specific needs of sexual abuse survivors, such as help in accessing therapeutic treatment to deal with impacts of abuse, and for these supports to be accessible until at least the age of 25.

In both cases, we welcome the government’s commitment to progressing reforms in these areas. We do note, however, that the provisions in the Bill do not, and indeed cannot, address these recommendations in full. Rather, meaningful implementation of these recommendations must go beyond legislative change, noting in particular the Royal Commission’s emphasis on:

- The importance of monitoring and evaluating the extent to which the full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle is achieved in practice, given previous findings of significant non-compliance with legislative requirements.²²
- The development of targeted supports to address the specific needs of survivors of child sexual abuse leaving out-of-home care.²³

We look forward to hearing more about what the government is doing to work towards the full implementation of these recommendations in its 2020 progress report.

²¹ Royal Commission, *Final Report: Volume 12*, p. 341.

²² See discussion in Royal Commission, *Final Report: Volume 12*, pp. 330–332.

²³ See discussion in Royal Commission, *Final Report: Volume 12*, pp. 340–341.

Conclusion

knowmore welcomes Western Australia's commitment to child protection reforms that respond to recommendations from the Royal Commission.

We strongly support the amendments in the Bill that will extend the state's mandatory reporting requirements to ministers of religion. This will bring Western Australia into line with every other state and territory except Queensland and, more importantly, help to ensure that child protection authorities are able to intervene in child sexual abuse cases that come to the attention of people in religious ministry.

We also strongly support the provisions in the Bill that will ensure ministers of religion are not excused for failing to comply with their reporting obligations because of the seal of confession or other tenets of their faith or religion. The importance of these provisions is very clearly demonstrated in the accounts of those survivors who spoke to the Royal Commission, who had disclosed their abuse as children during confession but were offered no protection from further harm.

Finally, we acknowledge those provisions in the Bill related to recommendations from the Royal Commission regarding Aboriginal and Torres Strait Islander children in care and care-leavers. We support the need for reform in these areas, and highlight the importance of additional, non-legislative action to ensure that the implementation of these recommendations delivers on the Royal Commission's intent.

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Community Legal Centres Australia acknowledges the traditional owners of the lands across Australia upon which we live and work. We pay deep respect to Elders past and present.

knowmore
free legal help for survivors