

Andrew Barr MLA

Chief Minister



Member for Kurrajong

Treasurer

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Ms Elizabeth Lee

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Ms Lee

I write in response to the Standing Committee on Justice and Community Safety's Scrutiny Report No 18 (the Scrutiny Report) and comments made on the Ombudsman Amendment Bill 2018 (the Bill).

The following response is provided to the Committee on the points raised.

Report under Section 38 of the *Human Rights Act 2004*

The Committee has requested further information on why religious confessions have been excluded from the scope of the scheme only until 31 March 2019. The Committee also requested clarification whether the Bill is intended to entirely exclude religious confessions from the scope of section 11 of the Ombudsman Act as suggested by the explanatory statement.

The intention of the Bill is that all allegations of reportable conduct made outside of religious confessional be reported to the ACT Ombudsman by religious organisations from 1 July 2018 to 31 March 2019. Subject to any future decision by Government and the Assembly following consideration as outlined below, after 31 March 2019, all allegations of reportable conduct will be reportable including those made within the context of the confessional.

While religious institutions are already subject to the Reportable Conduct Scheme (the Scheme) when providing school, childcare, health and out-of-home care services, the Ombudsman Amendment Bill 2018 will expand the scope of the Scheme to also cover any activities, facilities, programs or services provided by religious institutions, from 1 July 2018.

The Royal Commission specifically outlined the reasons why there should be no exclusion for reporting suspected abuse of children that is disclosed in a religious confessional. Its work on reportable conduct within institutions is the basis of the Government's Bill. The purpose of the Bill is to achieve a stronger reportable conduct scheme.

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The nine month exclusion for religious confessionals reflects a presumption in favour of implementing the recommendations of the Royal Commission, while acknowledging the complexities around religious confession in particular. These complexities will take time to resolve and the Government notes that no jurisdiction in Australia has yet worked through every aspect of the religious freedom, criminal law, evidence law, and regulatory issues involved.

The improvements to child safety that come from an expanded reportable conduct scheme should not be delayed while questions around religious confession are resolved. The nine month period in this Bill will allow time for discussions with other jurisdictions through the Council of Attorneys General, which will inform the ACT's position, and for ongoing consultation with key local stakeholders.

There are a number of specific issues related to the legal status of religious confessions in addition to questions about how they are treated in Reportable Conduct legislation. These are outlined below and the Government will also be working through them in the lead up to March 2019:

Criminal Justice

The Royal Commission (the Royal Commission) into Institutional Responses to Child Sexual Abuse has also made a number of criminal justice recommendations relating to creating offences with implications for the confidentiality of religious confessions.

In particular the Royal Commission recommended that each state and territory government introduce legislation to create a criminal offence of failure to report child sexual abuse in an institutional context (Recommendation 33).

The Royal Commission recommended that the offence apply to members of the clergy, including where information about an offence has been disclosed in or in connection with a religious confession. Specifically, the Royal Commission recommended that all jurisdictions should ensure that the legislation exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective (Recommendation 35).

The Royal Commission has also recommended that all activities of religious organisations be included within scope of reportable conduct schemes. The ACT Government had previously committed to expanding the scope of the scheme to include these activities, which this Bill will enact.

If Recommendation 35 is to be implemented in full, this will require amendments to the confessional privilege in Section 127 of the Uniform Evidence Acts. This provision is currently uniform across the ACT, NSW, Victoria, Tasmania, the Northern Territory and the Commonwealth

This is a complex evidence and criminal law question which crosses jurisdictions in Australia. A nationally consistent approach would be an ideal outcome, but even in the absence of national consistency the ACT Government will continue to engage with other jurisdictions to develop a response.

Human Rights Act and Freedom of Religion

The ACT's *Human Rights Act 2004*, section 14, recognises a right to freedom of thought, conscience, and religion. The Royal Commission did consider issues of religious freedom and the importance of the religious confessional, and the Government outlined its analysis of competing human rights in the Explanatory Statement to the Ombudsman Amendment Bill. At its core, the legislation represents the conclusion that a best-practice framework for protecting children from abuse should be generally applicable to institutions. The Government is of the view that these generally applicable laws to prevent child abuse are compatible with the Human Rights Act.

The delay of nine months for application of the new scheme to religious confessionals recognises the legal complexities that go beyond questions of how to best protect children, and allows time for them to be resolved through consultation with other jurisdictions and the ACT community.

The ACT Government supports the intent of the Royal Commission in making its recommendations about reportable conduct, and has moved promptly to expand its reportable conduct scheme in response. However, the Government also recognises the need to undertake further work on the specific question of religious confessional, and the nine month period will allow for that to occur.

I thank the Standing Committee for its consideration and comments on the Bill.

Yours sincerely

Andrew Barr MLA
Chief Minister