

# Queensland Family and Child Commission

## Submission

To: Education, Tourism, Innovation and Small Business Committee      Date: 29 May 2017

Topic: Child Protection and Education Legislation (Reporting of Abuse) Amendment Bill 2017

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The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Education, Tourism, Innovation and Small Business Committee regarding the Child Protection and Education Legislation (Reporting of Abuse) Amendment Bill 2017.

The QFCC supports strengthening safeguards for vulnerable children and young people in Queensland. However, the QFCC suggests Queensland wait for the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) to release its final report before proceeding.

This will help to make sure Queensland law is consistent with the strongest evidence and national objectives to protect the safety and wellbeing of children and families.

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## Mandatory reporting for ministers of religion

### Recommendation

The QFCC recommends Queensland to wait for the Royal Commission into Institutional Responses to Child Sexual Abuse to release its final report before proceeding.

The Child Protection and Education Legislation (Reporting of Abuse) Amendment Bill 2017 intends to make ministers of religion mandatory reporters under Queensland law. The Royal Commission has heard of religious organisations receiving allegations of significant harm to children, without reporting that information to Child Safety Services.

The QFCC supports the intent of the Bill to protect the safety and wellbeing of children. Ministers of religion come into regular contact with children and families, and are in a trusted position which opens lines of communication to children, young people and families.

However, international examples show the potential for conflict between a minister's spiritual and legal obligations around reporting abuse. The Catholic practice of confession, which in principle requires strict confidentiality by a priest, could be heavily impacted by a legal obligation to report all reasonable suspicions of significant harm to children.

The *Child Protection Act 1999* states 'because a child's safety, wellbeing and best interests are paramount, their protection and care needs take precedence over the protection of an individual's privacy'.<sup>1</sup> Nonetheless, careful consideration is required to make sure any change in the law will have a positive impact on children and families, including in religious organisations. Policy and practice guidelines may also need to change to support ministers of religion to take on a role as mandatory reporters.

The Royal Commission has recently heard evidence about reporting by religious organisations, including the Catholic Church. The QFCC believes Queensland should wait for the Royal Commission to release its final report before proceeding, to make sure Queensland law is informed by the strongest evidence, and remains consistent with national objectives.

### Royal Commission hearing

On 9 February 2017, the Royal Commission heard evidence about whether mandatory reporting laws for clergy would interact with Catholic teachings about privacy in confession. Some Catholic organisations have submitted evidence that Catholic priests may disobey a law requiring them to reveal a confession. If a Catholic priest were to reveal the content of a confession, even where required by law, church authorities could decide the priest be laicised (stood down) or excommunicated (removed from the church).<sup>2</sup>

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<sup>1</sup> *Child Protection Act 1999* (QLD), s. 159B(g).

<sup>2</sup> Transcript of Royal Commission into Institutional Responses to Child Sexual Abuse, Public Hearing – Case Study 50 (Day 245), [http://www.childabuseroyalcommission.gov.au/downloadfile.ashx?guid=420181fb-8fdc-43e6-a1cd-0f1565aca5b8&type=transcriptpdf&filename=Transcript-\(Day-245\)&fileextension=pdf](http://www.childabuseroyalcommission.gov.au/downloadfile.ashx?guid=420181fb-8fdc-43e6-a1cd-0f1565aca5b8&type=transcriptpdf&filename=Transcript-(Day-245)&fileextension=pdf), 9 February 2017, accessed 22 May 2017.

However, other evidence provided to the Royal Commission suggests priests could still be entitled to reveal information presented to them in a spiritual confession if that information is not a direct confession of a sin. For example, if a child reveals abuse during confession, this is nonetheless not a confession of the child's sin, and could therefore be subject to mandatory reporting.<sup>3</sup>

The Royal Commission may include further research on mandatory reporting in its final report, which could help to make sure Queensland law supports the safety and wellbeing of children and families across the community.

### **Other Australian jurisdictions**

At present, no jurisdiction in Australia directly lists ministers of religion as mandatory reporters. Only the Northern Territory contains indirect provisions, requiring every person to report a belief 'on reasonable grounds' that a child may be a victim of a sexual offence, or suffer harm or exploitation.<sup>4</sup>

There are no exceptions in NT legislation for ministers of religion, nor for information received through religious practice such as a Catholic confession. There are no current evaluations as to whether these provisions have resulted in increased reporting of child abuse by ministers of religion in the NT.

### **Ireland**

Outside Australia, Ireland recently passed the *Children First Act 2015*, in which s. 15 and schedule 2 list members of the clergy and pastoral care workers as mandatory reporters.<sup>5</sup> However, these parts of the Act are yet to come into effect. The new law is currently undergoing a staged implementation without a set timeline, although the Child and Family Agency has stated 'it is expected that The Minister will be signing the remaining Commencement Orders on a phased basis'.<sup>6</sup>

### **United States**

Many US states include clergy as mandatory reporters, either by specifically listing clergy in the appropriate act, or by using wide laws similar to those in the NT requiring all citizens to report child abuse or neglect. However, many states have made exceptions for ministers of religion or for information received through religious practice.

For example, Florida requires mandatory reporting from 'any person', however the law also protects the 'confidentiality of communications made to a clergy member for the purpose of spiritual counsel'. California, on the other hand, lists clergy specifically as mandatory reporters, however legislation states 'a clergy member who acquires knowledge or reasonable suspicion of child abuse during a penitential communication is not required to make a report'.<sup>7</sup>

The protection of spiritual confidentiality is often called 'clergy-penitent privilege'. Seven US jurisdictions deny the use of clergy-penitent privilege in child abuse cases.<sup>8</sup> In these districts, all

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<sup>3</sup> Ibid.

<sup>4</sup> *Care and Protection of Children Act 2007* (NT), s. 26.

<sup>5</sup> *Children First Act 2015* (Ireland).

<sup>6</sup> Child and Family Agency (Ireland), *Children First Act 2015*, <http://www.tusla.ie/children-first/children-first-act-2015>, accessed 18 May 2017.

<sup>7</sup> Children's Bureau, Child Welfare Information Gateway, *Clergy as Mandatory Reporters of Child Abuse and Neglect*, <https://www.childwelfare.gov/pubPDFs/clergymandated.pdf>, 2015, accessed 18 May 2017.

<sup>8</sup> Guam, New Hampshire, West Virginia, North Carolina, Oklahoma, Rhode Island, Texas: Ibid.

ministers of religion must report suspected abuse, even where that suspicion is based on information received during Catholic confession.

Despite the clear conflict of interest between a priest's legal and spiritual obligations, strikingly little research has been conducted on the clergy-penitent privilege in terms of how it may affect a priest's actions. A number of scholars have written theoretical arguments about the interaction between legal and spiritual concerns.<sup>9</sup> More recently, Bartholomew has conducted a study on more than 700 decisions invoking clergy-penitent privilege, which shows American ministers of religion have often chosen to define their privilege narrowly, which has allowed them to report and testify in cases of child abuse. For example, some ministers have claimed they were offering emotional or practical counsel when they received information about allegations, rather than providing confidential spiritual counsel.<sup>10</sup>

This suggests the effectiveness of a rule requiring ministers of religion to report will be influenced by each minister's own interpretation of their spiritual role and their willingness to report.

### **Broad concerns about widening mandatory reporting**

In submissions to the Royal Commission, the QFCC has previously questioned whether broad mandatory reporting provisions would overburden an already stretched system.

A statistical study on clergy reporting laws in the United States has shown the number of reports have increased where clergy are mandated to report, however 'there were actually fewer confirmed reports and significant decreases in physical and sexual abuse and neglect victim identification'.<sup>11</sup> This suggests increasing reports may not lead to increased substantiations.

Recent history regarding institutional responses to child sexual abuse, and public sentiment in favour of mandatory reporting for ministers of religion, may override these concerns. Any broadening of mandatory reporting should be carefully considered to not generate large numbers of unnecessary reports, which could delay action on substantiated concerns.

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<sup>9</sup> See for example Durrant, R., 'Where there's smoke, there's fire (and brimstone): is it time to abandon the clergy-penitent privilege?', *Loyola of Los Angeles Law Review*, 39, pp. 1339-1368.

<sup>10</sup> Bartholomew, C., 'Exorcising the Clergy Privilege', *Virginia Law Review*, 103, Research paper no. 2016-44, 2017.

<sup>11</sup> Palusci, V., Vandervort, F. and Lewis, J., 'Does changing mandated reporting laws improve child reporting in large U.S. counties?', *Children and Youth Services Review*, 66, 2016, 170-179, p. 176.