



Anglican Church of Australia

Royal Commission Working Group

CONSULTATION PAPER CRIMINAL JUSTICE SUBMISSION

PREFACE

This submission is made by the Royal Commission Working Group (**RCWG**) appointed by the Standing Committee of the General Synod of the Anglican Church of Australia (**ACA or Anglican Church**) to coordinate a response on its behalf of to the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**). The submission responds to questions in the Consultation Paper: Criminal Justice issued by the Royal Commission in September 2016 (**Consultation Paper**).

The ACA operates under a decentralised structure and its core units of organisation are the 23 dioceses. There are also mission agencies, social welfare agencies, Anglican schools and parachurch organisations with varying degrees of autonomy.

The ACA is committed to responding to complaints from those who have been abused and encouraging those who have information to come forward and supporting them through the process and providing appropriate redress.

It should be noted that each diocese has responsibility for the development and implementation of processes for receiving, investigating and responding to information and complaints within their jurisdiction. The different processes in the dioceses incorporate substantially similar principles.

Each autonomous Anglican agency, school and organisation has a responsibility to have a complaints handling system in place. In some cases the complaints response processes operating in these organisations have been developed to reflect best practice principles promoted by another entity outside the Anglican church – e.g. schools may have adopted principles and procedures promoted by a peak independent school organization and the welfare agencies may be obliged to implement government policies and procedures relevant to the specific community services they provide – e.g. foster care services.

The ACA's complaints management and clergy disciplinary processes have been designed to support criminal investigation processes, which may be conducted at the concurrently.

RESPONSE

Some of the issues addressed in the Consultation paper are not relevant to the experience of the ACA. This submission will focus on some of the areas addressed in Chapter 4, Police Responses and Institutions and Chapter 6, Third Party Offences.

4 Police Responses and Institutions

4.1 Whether privacy and defamation laws create difficulties for institutions in communicating within the institution, or with children and parents, the broader community or the media; and possible solutions, including communication by police or child protection agencies or legislative or policy reform

The ACA has identified challenges in communicating the progress and outcomes of investigative and disciplinary procedures arising from complaints of child sexual abuse against churchworkers. In particular, issues of privacy and defamation have had to be considered when informing Anglican community members that a person has been stood down while allegations of misconduct are under investigation or that a person's employment has been terminated when disciplinary outcomes have been determined.

The ACA has also identified challenges in communicating information on allegations or findings against current or former ACA churchworkers who are may be working with children in other institutions. The ACA considers it has an obligation to communicate relevant information in order for the other institution to undertake a risk assessment.

The ACA would support the introduction of some form of statutory protection for officers of institutions who communicate information of this nature made in good faith, similar to the protections in place for mandatory reporting.

4.2 Issues of police communication and advice, including to institutions, children and parents, the broader community and the media.

The Consultation Paper includes commentary from Scouts Australia and The Salvation Army (page 148) on the potential conflict when a criminal investigation is underway at the same time as the institution is conducting its own risk management and investigative process.

The ACA shares the commitment of Scouts Australia and The Salvation Army not to impede or prejudice the criminal investigation in any way but, like those institutions, is also obligated to consider removing any alleged perpetrator from situations where there is any chance of children being at risk. Natural justice principles require that a churchworker be informed of the reason for any limitation put on their activity within the church.

The ACA requires information relating to child sexual abuse complaints to be recorded on the "*National Professional Standards Register*" (**Register**). The Directors of Professional Standards have responsibility for including relevant information on the Register and it can be searched by authorised users for the purpose of safe ministry screening. Information on the structure and content included on the Register has been previously provided to the Royal Commission.

The original church legislation guiding the operation of Register required that any person listed on the Register following an allegation being made against them (**the respondent**) had to be advised within 30 days and was able to request access to the information recorded.

In acknowledgement of the importance of supporting criminal investigation processes, this legislation has been amended and it is possible for a Director of Professional Standards to record details of an active police investigation which precludes the respondent being advised until further notice.

Not informing the respondent also inhibits the extent of any internal investigation process as the respondent cannot be requested to provide a statement.

More importantly, complying with a police request not to alert the respondent creates a conflict when the institution risk management process determines that person should be removed from situations which may put children at harm.

The ACA is of the view that the protection of children should always take priority but recognises how taking action may hamper a criminal investigation.

4.4 The issue of blind reporting and its interaction with reporting offences discussed in section 6.

The ACA has experienced situations where an adult survivor does not consent to the abuse being reported to the police. In these cases reporting the identity or identifying circumstances of a survivor could significantly impact their wellbeing and it has been necessary to consider the competing responsibilities of protection of the individual and public safety.

At all times an assessment needs to take into account whether there is potential danger to children and action needs to be taken through the normal child protection reporting avenues where an alleged perpetrator remains active in the community.

Allowing a survivor to move through a process of healing at their own rate and make decision on the timing of disclosure and reporting may be an empowering part of the healing process. Blind reporting in these circumstances has the potential to provide law enforcement authorities with significant information while meeting the immediate needs of the survivor. The position could be reviewed if the wellbeing of the survivor is no longer at risk of harm.

Currently the dioceses and agencies of the ACA apply different reporting practices in this type of situation and would welcome a recommended policy on blind reporting.

6. Third-party offences

6.1 Whether there should be a criminal offence in relation to failure to report and, if so, whether it should apply to:

- **all serious criminal offences**
- **child sexual abuse**
- **institutional child sexual abuse**

6.4 On an offence for failure to protect

6.6 Possible institutional offences, including:

- **whether institutional offences are necessary in addition to offences for failure to protect**
- **if so, what conduct or omissions, and whose conduct or omissions, should constitute the offence(s)**
- **Whether civil liability of the kind we recommended in the Redress and civil litigation report, if implemented, would be sufficient.**

Any criminal offence in relation to a failure to report should acknowledge the difference in responsibilities between those of institutional officials and those of family members or support persons to whom the abuse is disclosed.

It should allow a survivor to disclose their abuse to a support person, who is not an institutional representative or subject to mandatory reporting obligations, without that person having any obligation to report.

Institutional representatives must comply with any mandatory reporting obligations and apply risk management principles appropriate to the circumstances of disclosure to ensure that children are protected from harm. In the ACA, some dioceses have determined that their employees and office holders will act as mandatory reporters, even if they do not fall within the categories of the mandatory reporting legislation.

The criminal offence created in Victoria – failing to protect a child from risk of sexual abuse – acknowledges the responsibility of institutions in these areas.

The ACA acknowledges that the introduction of this type of offence would strengthen the responsibility of institutional representatives to comply with the institution's policies and the laws of the jurisdiction in which they operate relating to reporting abuse and otherwise protecting children.

This type of offence would focus decision making around the initiating of investigative processes and the removal of a churchworker from office while matters are determined.

**Royal Commission Working Group
General Synod of the Anglican Church of Australia**

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