

COMMENTS ON HANDLING CASES OF CHILD ABUSE IN AUSTRALIA

To: Service Committee

From: H. V. Mouritz

Date: November 21, 1997

Dear Brothers:

Only one state in Australia (Northern Territory) requires **mandatory reporting** of child abuse cases. One other state, New South Wales, has mandatory reporting, but the legal department believes that ministers of religion are exempted from this requirement.

Only one state in Australia has **ecclesiastical privilege**, but it is only in case of a confession handled "according to the ritual of the church." Other states do not have any kind of ecclesiastical privilege, although courts are very reluctant to force ministers to testify.

The memorandum from Brooklyn dated LLJ:LSD October 7, 1997 states that when an accusation is made to an elder, he and another elder (preferably the presiding overseer) will determine whether there is any substance to the accusation. They then call the Society's legal department to see whether they are obligated to report the matter to the authorities. If they are required to report, the memo says they should do so.

The branch agrees with this part of the memo, but they propose that, if reporting is mandatory, the elders should inform the person that he should report the matter himself, and if he does not do so, they will be obliged by law to make a report. If reporting is not mandatory, they should inform the individual that they will keep the matter confidential, but that, if it does come to the attention of the authorities and they are called upon to disclose what they know, they will have to do so.

Following this, the two elders will follow the normal procedures to have a judicial committee look into the matter. Points 3 and 4 in the memorandum of October 7 cover this point. According to normal procedure, the body of elders will become aware of the accusation when called upon to form a judicial committee, but, even if this knowledge legally obliges them to make a report to the authorities, they will not have to take any action, since they will know that the matter has already been reported.

If a person with a history of child abuse moves to another congregation, the elders will follow the instructions in the Society's letter of March 15, 1997. There does not seem to be any need to simply state, as the October 7 memo says: "[abuser] is a known child molester." If there is mandatory reporting in that state, that statement would give them reasonable grounds for believing it, since it came from a reliable source, and so in theory they may still be required to disclose it. So the branch does not see any reason why a complete report should not be given, as outlined in the Society's instructions, and this would certainly be of more value to the elders in the new congregation.

If a person whose offense has been dealt with moves to a state where reporting is mandatory, the elders may have to inform the person of the situation, and that the elders may have to make a report if he does not do so. The branch is asking, however, about possible situations where the offense was committed many years ago, it has been dealt with, and the individual appears to have made a recovery. Is it

necessary to bring an old matter up again by reporting it? What if the offense was committed before the person learnt the truth? He has now repented, "turned around," and been baptized. There is no record of his offending again. It would seem to me that elders should use good judgment in such cases. If the offense is an old one, and especially if the offender was not then in the truth, the elders could conceivably conscientiously feel that the matter is in the past and not something current. Surely the law would not punish them if they did not report an old offense of that nature. They could always say that, as far as they know, the person has reformed, but that they are monitoring the situation, and, if there should be any reason in the future to believe that this is not the case, they will then follow the law and make a report. Of course, if because of what some other party does, the law enforcement agencies do find out about it, and the elders are required to tell what they know, they may have to do so if they cannot obtain ecclesiastical privilege. But in most cases they would not have any first-hand knowledge of the case, and if they say that, they would not likely be asked to testify.

The point was made about the possible obligation on brothers in the Society's office to report a case when notification is sent in. If the elders follow the procedures, and they have made any necessary report, it would seem that there would be no legal obligation on those in the office to make another report. If we are in agreement that such matters may be disclosed on demand by a court if ecclesiastical privilege cannot be obtained, there would seem no reason why a full report could not be sent to the Society. The congregation elders would have such a report in their files, and if they are going to produce it if required, then there should be no need to call on the Society for further information. Brothers in the office will not have any first-hand knowledge to tell, in any case. As to whether reporting the facts to the Society would negate ecclesiastical privilege, we could always claim that it is part of the "ritual of the church." If we are not granted privilege, we are going to disclose it anyway, so it will hardly be a major problem.

I do not think we can cover every possible situation that might arise. These general guidelines should be sufficient. If unusual situations arise, the special circumstances can be considered and the branch can write about it then.

I hope these remarks will be of assistance. The branch will look forward to any comments you may have.

Your brother,