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**Supplementary Submission of the Synod of Victoria and Tasmania,
Uniting Church in Australia to the Senate Legal and Constitutional
Affairs Committee Inquiry into *Combating Child Sexual Exploitation
Legislation Amendment Bill 2019*
2 September 2019**

The Synod of Victoria and Tasmania, Uniting Church in Australia, makes this follow-up to the inquiry into the *Combating Child Sexual Exploitation Legislation Amendment Bill 2019* in response to the request from the Committee that the Synod provide its view on the existing protections for people who report suspicions of child sexual abuse in response to the requirements of the Bill.

The Bill itself provides protections to people who report suspicions of child sexual abuse as required under subsection 273B.5. The protections are outlined in subsection 273B.9.

In addition, the Synod is of the view that a person who is a public servant or is contracted service provider to the Commonwealth Government could seek the protections of the *Public Interest Disclosure Act 2013*. In terms of reporting suspected child sexual abuse the person could argue that this constitutes disclosable conduct under Part 2, Division 2, Subdivision B, Section 29 of the Act. Specifically, protection could be sought under the following grounds:

1 Conduct that contravenes a law of the Commonwealth, a State or a Territory.

4 Conduct that constitutes maladministration, including conduct that:

(a) is based, in whole or in part, on improper motives; or

(b) is unreasonable, unjust or oppressive; or

(c) is negligent.

5 Conduct that is an abuse of public trust.

8 Conduct that:

(a) unreasonably results in a danger to the health or safety of one or more persons; or

(b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.

The protections granted by the *Public Interest Disclosure Act 2013* are outlined in Part 2, Division 1.

The protections are available to the following people, as outlined in Part 2, Division 2, Subdivision B, Section 30:

30 Officers or employees of a contracted service provider

- (1) *For the purposes of this Act, if an individual is a public official because the individual:*
- (a) *is an officer or employee of a contracted service provider for a Commonwealth contract; and*
 - (b) *provides services for the purposes (whether direct or indirect) of the Commonwealth contract;*
- the individual does not engage in conduct in connection with his or her position as such a public official unless the conduct is in connection with entering into, or giving effect to, the contract.*
- (2) **A contracted service provider** for a Commonwealth contract is:
- (a) a person who:
 - (i) *is a party to the Commonwealth contract; and*
 - (ii) *is responsible for the provision of goods or services under the Commonwealth contract; or*
 - (b) a person who:
 - (i) *is a party to a contract (the **subcontract**) with a person who is a contracted service provider for the Commonwealth contract under paragraph (a) (or under a previous application of this paragraph); or*
 - (ii) *who is responsible under the subcontract for the provision of goods or services for the purposes (whether direct or indirect) of the Commonwealth contract.*
- (3) **A Commonwealth contract** is a contract:
- (a) *to which the Commonwealth or a prescribed authority is a party; and*
 - (b) *under which goods or services are to be, or were to be, provided:*
 - (i) *to the Commonwealth or a prescribed authority; or*
 - (ii) *for or on behalf of the Commonwealth or a prescribed authority, and in connection with the performance of its functions or the exercise of its powers.*

Legal advice would be needed to clarify if the persons defined as a 'Commonwealth officer' under Schedule 1, Subsection 273B.1 (h), (k) and (l) of the would be covered by Part 2, Division 2, Subdivision B, Section 30 of the *Public Interest Disclosure Act 2013*.

Where a person has a reporting obligation under subsection 273B.4 of the *Combating Child Sexual Exploitation Legislation Amendment Bill 2019* and is an employee of a private entity contracted or subcontracted to the Commonwealth Government, they might be able to seek protection from reprisals or compensation for reprisals under the provisions of the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*. The Act applies to:

1317AAA Eligible whistleblowers

*An individual is an **eligible whistleblower** in relation to a regulated entity if the individual is, or has been, any of the following:*

- (a) *an officer of the regulated entity;*
- (b) *an employee of the regulated entity;*
- (c) *an individual who supplies services or goods to the regulated entity (whether paid or unpaid);*

- (d) *an employee of a person that supplies services or goods to the regulated entity (whether paid or unpaid);*
- (e) *an individual who is an associate of the regulated entity;*
- (f) *for a regulated entity that is a superannuation entity:*
 - (i) *an individual who is a trustee (within the meaning of the Superannuation Industry (Supervision) Act 1993), custodian (within the meaning of that Act) or investment manager (within the meaning of that Act) of the superannuation entity; or*
 - (ii) *an officer of a body corporate that is a trustee, custodian or investment manager of the superannuation entity; or*
 - (iii) *an employee of an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii); or*
 - (iv) *an individual who supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid); or*
 - (v) *an employee of a person that supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid);*
- (g) *a relative of an individual referred to in any of paragraphs (a) to (f);*
- (h) *a dependant of an individual referred to in any of paragraphs (a) to (f), or of such an individual's spouse;*
- (i) *an individual prescribed by the regulations for the purposes of this paragraph in relation to the regulated entity.*

1317AAB Regulated entities

Each of the following is a regulated entity:

- (a) *a company;*
- (b) *a corporation to which paragraph 51(xx) of the Constitution applies;*
- (c) *an ADI (within the meaning of the Banking Act 1959), an authorised NOHC (within the meaning of that Act) or a subsidiary of an ADI or an authorised NOHC;*
- (d) *a general insurer (within the meaning of the Insurance Act 1973), an authorised NOHC (within the meaning of that Act) or a subsidiary of a general insurer or an authorised NOHC;*
- (e) *a life company (within the meaning of the Life Insurance Act 1995), a registered NOHC (within the meaning of that Act) or a subsidiary of a life company or a registered NOHC;*
- (f) *a superannuation entity or a trustee (within the meaning of the Superannuation Industry (Supervision) Act 1993) of a superannuation entity;*
- (g) *an entity prescribed by the regulations for the purposes of this paragraph.*

The reporting of the suspected child sexual abuse may gain protection of the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* under section 1317AAA 5(d) if it “constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more”.

In addition, where a person has a reporting obligation under subsection 273B.4 of the *Combating Child Sexual Exploitation Legislation Amendment Bill 2019* and is an employee of a State or Territory government or contracted to a State or Territory Government they may be

able to seek protection against reprisal or compensation for reprisal under relevant State or Territory laws covering whistleblowers.

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