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**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 2018*
4 March 2019**

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to make a submission to the inquiry into the *Combating Child Sexual Exploitation Legislation Amendment Bill 2019* and supports its passage through the Parliament.

The Synod supports the Bill:

- Introducing an offence for a Commonwealth officer who negligently fails to reduce or remove the risk a child under their care, supervision or authority being sexually abused, if it is part of their actual or effective responsibilities as a Commonwealth officer to reduce or remove that risk.
- Introducing an offence for a Commonwealth officer who exercises care or supervision over children, will be guilty of an offence if they know of information that would lead to a reasonable person to believe or suspect that another person has or will engage in conduct in relation to a child that constitutes a child sexual abuse offence. Care needs to be considered in how the threshold for reporting is set. A low threshold will lead to the banning of many types of behaviour involving interaction with children (including behavior that can be very beneficial for children) and to a large number of 'false positive' reports (concerns that turn out to be unfounded). A high threshold will allow behavior that can be used by perpetrators as opportunities for grooming and a large number of 'false negatives' (failure to report concerns which hindsight shows were evidence of grooming or abuse).¹
- Introducing offences to criminalise the use of a carriage service to advertise or solicit child-like sex dolls, use of a postal service to send child-like sex dolls. The US House of Representatives passed the *Curbing Realistic Exploitative Electronic Pedophilic Robots*

¹ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 33-34.



(*CREEPER*) Bill in June 2018 to ban the importation, sale and distribution of child sex dolls and robots.²

- Introducing an offence to possess child-like sex dolls.
- Introducing offences for possessing or controlling child abuse material in the form of data held in a computer or contained in a data storage device, obtained or accessed via a carriage service, to ensure that possession of child abuse material is captured as criminal behavior.
- Criminalising causing a person to enter into a forced marriage and being party to a forced marriage.
- Including all marriages involving children under the age of 16 in the definition of forced marriage in subsection 270.7A(1) of the *Criminal Code*.
- Removing Section 272.17 of the *Criminal Code* to ensure the existence of a marriage between the defendant and a child under the age of 16 is no longer a valid defence to conduct that is otherwise criminal.

The offence for a Commonwealth officer negligently failing to reduce or remove the risk a child under their care, supervision or authority being sexually abused needs to be supported by ensuring that such Commonwealth officers have the authority and resources to reduce or remove such risks.

Complexity of making Mandatory Reporting of suspected Child Sexual Abuse effective

The reporting of suspected child sexual abuse by adults caring for children is particularly important for younger children, where accidental disclosure is higher.³ In an example from day care in the US, only 37% of initial disclosures of sexual abuse were made directly by the victims and 63% were prompted by an adult, after noting some suspicious behavior or symptoms.⁴ Early detection and reporting of staff behavior of concern may assist in preventing the progression to where sexual abuse occurs.⁵ The presence of someone who has the potential to act in the role of a guardian may not always prevent sexual abuse, but it does reduce the duration and severity of sexual abuse.⁶

However, it needs to be recognized that creating an offence for not reporting suspected child sexual abuse of itself is inadequate to ensure an environment in which the best possible care

² https://www.huffingtonpost.com.au/entry/house-passes-bill-banning-sex-dolls-that-look-like-children_us_5b23c2f7e4b07cb1712dcc7d

³ Judy Cashmore, Alan Taylor, Rita Shackel and Patrick Parkinson, 'The Impact of Delayed Reporting on the Prosecution and Outcomes of Child Sexual Abuse Cases', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, University of Sydney Law School, August 2016, 30.

⁴ Judy Cashmore, Alan Taylor, Rita Shackel and Patrick Parkinson, 'The Impact of Delayed Reporting on the Prosecution and Outcomes of Child Sexual Abuse Cases', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, University of Sydney Law School, August 2016, 30-31.

⁵ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 29.

⁶ Keith Kaufman and Marcus Erooga, 'Risk profiles for institutional child sexual abuse: A literature review', Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, 90.



will be provided to children. As pointed out by research for the Royal Commission into Institutional Responses to Child Sexual Abuse:⁷

Workers who are fearful of being wrongly suspected of abuse may keep their distance from children and not provide the nurturing, healthy relationships that children need to have with adults. Organisations have to reach some conclusions as to what level of concern should be reported. Making it compulsory to report even a low level of concern will identify more cases of abuse but at the cost of including numerous non-abusive cases. Efforts therefore need to be made to create a culture that understands the ambiguity of the behavior so that innocent people's reputations are not tainted by false reports.

The researchers stated:⁸

Organisations seeking to be safe places for children must encourage frequent, open and supportive supervision of staff to help counteract the difficulties people face in making sense of ambiguous information about colleagues. A shared acknowledgement of how difficult it can be to detect and respond effectively to abuse contributes to a culture that keeps the issue high on the agenda.

Further, simply making it an offence to not report suspected child sexual abuse, does not make someone capable to correctly identifying abusive behavior when it is present, as Munro and Fish point out:⁹

Additionally, observing the abusive or grooming behaviours is difficult because perpetrators seek to conceal their activity, and, as the case studies show, are often extremely cunning in how they go about this and neutralize any emerging suspicions. This includes manipulating the children and young people they abuse so that they are unable or slow to ask for help, and manipulating the adults so that they are often slow to understand or believe what it is they are seeing.

Further, child sexual abuse is sufficiently rare that:¹⁰

... for an individual worker, the probability of working with a person who sexually abuses children is low and first-hand experience of identifying and acting on suspicions extremely rare. The vast majority of people who might play a key role in this important task are therefore novices, yet the task they are faced with involves making sense of only glimpses of the full extent of a colleague's abusive behavior that may be ambiguous in nature.

Training is important to assist staff that have a duty of care for children to make appropriate judgements about what is and what is not acceptable behavior towards children.¹¹ Research by

⁷ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 6.

⁸ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 7.

⁹ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 13.

¹⁰ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 13.



Saunders and McArthur found that professionals working with children spoke about their lack of knowledge about adult grooming behaviours, and their limited capacity to recognize some of these behaviours. Most participants in the research reported a general lack of confidence in responding to child safety issues concerning another adult's behavior, suggesting they needed a more tangible guide for assessing whether or not an adult's behavior should be reported or challenged.¹²

Munro and Fish point out that having the right culture is vital to providing a child safe environment, in addition to training and education. In their words to create a child safe environment in an organization:¹³

... this would include having the right policies, guidance and training. But the literature on systems approaches also highlights that this is not sufficient. The culture within which these factors operate has a major impact on their effectiveness in ensuring the safety of children.

The Synod supports the suggestion of Munro and Fish that it is helpful to have an advisory service that assists staff in identifying behaviours that should be reported:

Training is necessary but not sufficient for creating safety. It must be remembered that most workers are not abusive and any one worker is unlikely to come across a person who sexually abuses children at all, let alone frequently, during their working life. Consequently, the importance of understanding the problem of child sexual abuse is not being continually reinforced by observing instances of abuse. When this is combined with the degree of judgement needed, and hence fallibility in applying policies and following procedures, the journey from observing something suspicious to being clear enough to report it can be complicated. We suggest that access to some kind of advisory service would be useful both for those thinking of raising concerns via a formal internal reporting system and for those running that system. This would offer a form of support and supervision of their risk assessment. Talking through their concerns with someone more experienced may help workers to more accurately interpret the observed behavior in its context or to work out what additional information could help them make sense of what is worrying them.

Child Abuse Material

As it appears the Government does not plan to proceed with the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017*, the Synod asks that the Committee recommend that the *Combating Child Sexual Exploitation Legislation Amendment Bill 2019* be amended to include provisions to repeal of all references in the *Criminal Code* and throughout Commonwealth legislation of 'child pornography material' and replacing these references with a single definition of 'child abuse material'. The use of 'child abuse material' reflects the terminology used by those who work with survivors of child sexual

¹¹ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 29.

¹² Vicky Saunders and Morag McArthur, 'Help-Seeking Needs and Gaps for Preventing Child Sexual Abuse', A Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Institute of Child Protection Studies, Australian Catholic University, March 2017, 40.

¹³ Eileen Munro and Sheila Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, Social Care Institute for Excellence, September 2015, 27.



abuse and law enforcement. 'Child pornography' still appears in some international conventions and in early laws written to criminalise the material. Given the growing acceptance of pornography as a legitimate product in Western societies, the term 'child pornography' is now seen to offer some legitimacy to the material in question when it should be regarded as unacceptable and criminal. The term 'child pornography' is also used by opponents of the full range of measures needed to eliminate such material. The AFP have for years provided advice to media at the bottom of media releases related to offences committed in relation child sexual abuse material stating:

Note to media: CHILD EXPLOITATION IMAGES, NOT 'CHILD PORNOGRAPHY'

Use of the phrase 'child pornography' actually benefits child sex abusers:

- *It indicates legitimacy and compliance on the part of the victim and therefore legality on the part of the abuser*
- *It conjures up images of children posing in provocative positions, rather than suffering horrific abuse*
- *Every photograph captures an actual situation where a child has been abused. This is not pornography.*

It would make sense for Commonwealth legislation to reflect the advice of the law enforcement agency with the responsibility of combating the production, distribution and consumption of child sexual abuse material.

The Synod notes that the Explanatory Memorandum envisages that the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017* will proceed (p. 48), but given the length of time since the Bill passed the House (19 October 2017) and the proximity to the Federal election, it appears unlikely the Government will proceed with the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017*. Therefore it would be better if the *Combating Child Sexual Exploitation Legislation Amendment Bill 2019* included the provisions to move from 'child pornography material' to 'child abuse material'.

Forced Marriage

With regards to the section on forced marriage in the Bill, while supporting the proposed changes, the Synod would urge that much more is needed to address the issue and ideally prevention is much more desirable in many cases than prosecution and imprisonment. Prosecution and imprisonment assumes that prosecution is in the best interest of the victim and is the best indicator for success in ending the practice of forced marriage. Yet, the inherently personal relationship between offenders and victims often means the person being forced to marry does not regard prosecution as a desirable outcome—they simply do not want to get married or are seeking support to safely leave the marriage. In such situations, requiring cooperation with the criminal justice system could be preventing women and girls from leaving dangerous, if not life-threatening circumstances.

Decentralising the role of law enforcement would fundamentally change how we approach the issue to allow greater consideration of non-criminal justice outcomes as determiners for success. Currently, being able to access 200 days of support services for victims of forced marriage or those in danger of forced marriage, still needs to be made via a referral from the Australian Federal Police. Beyond the interests of the individual are those of the individual's community, which includes other young women at risk. The unbalanced emphasis on prosecution to reduce the practice of forced marriage poses the risk of driving communities into further isolation. It also greatly limits the tools and strategies being developed and made



available to key responders and to community members themselves to address the reasons why forced marriage is practised so it can be ended once and for all.

A problematic gap in addressing needs of individuals at risk of early and forced marriage is the lack of a localised, operational framework that stipulates the roles and responsibilities of state and federal government agencies and how they should coordinate to best serve victims and people at risk.

There remains little acknowledgement of the intersection of forced marriage with other complex social problems including family violence, child abuse, sexual assault/rape, stalking, female genital mutilation and homelessness. Various front line responders such as state police, school teachers and health care providers are positioned in the community to identify and respond to forced marriage cases; however, across the country, many remain unaware of the national policy framework and do not have the knowledge, resources and mechanisms necessary to provide appropriate direct support. As such, women and girls are reliant on a precarious culmination of circumstances that may or may not serve their best interests, as illustrated in the below case studies.

New South Wales Police in Sydney contacted The Salvation Army after a 19- year-old woman reported to them that she could not return home as she was being forced to be married. The police were unaware of the federal framework and had limited knowledge of how to respond to the young woman's unique circumstances. Officers contacted a chaplain of The Salvation Army with whom they had a relationship, who informed them of The Salvation Army's anti-slavery programs and assisted to make a referral to the Salvation Army. Had the officers not had the relationship with that chaplain, the victim may not have been linked with appropriate care.

In another case, child protection authorities became involved with a family where the mother was arranging the forced marriage of her two daughters overseas. Having received no information or training on early and forced marriage, the primary worker was unsure of what to do, how to respond and what other agencies were appropriate to include in the case response. Fortunately, the worker's colleague had just attended a community presentation on forced marriage given by the Salvation Army and provided him with relevant contact information. Subsequently, authorities intervened to safeguard the girls from being taken overseas for marriage; however, as they were unwilling to cooperate with federal police, the girls were unable to access the Support Program and were referred to an alternative service provider. Had the worker's colleague not the presentation on forced marriage, this case could have taken a very different direction.

In the absence of a clear, nationwide operational framework, too much is left to chance. As these case studies show, the current approach consists of an ad hoc, personalised response that depends upon the knowledge, decisions and actions of individuals which vary significantly within and across the states. Taking the child protection system as an example, the lack of clarity is resulting in broad interpretation of the system's role and obligations, particularly with regard to young women approaching the age of 18. In cases where child protection authorities do not accept they have a duty of care, there are no provisions for legal guardianship.

Establishing a nationwide framework for case coordination would not only assist responders to do their jobs better; but it would also facilitate a more rights-based response that strikes a better



balance between the public interest and the interests of the young women most directly impacted by forced marriage.

A more coordinated response would also provide a process where the best outcome is determined by a young woman's needs for safety and stability rather than by a prescribed government framework.

To address the above issues, Australia must build a nuanced and comprehensive response that addresses the complexity of early and forced marriage and meets the distinct needs of the young people affected.

With the increase in referrals, along with the results of recently completed pilot programs, we are getting a clearer picture of early and forced marriage in Australia. There is also a growing body of research and good practice examples from overseas where efforts to curb forced marriage have been underway for a number of years. As such, there is a distinct opportunity for the Australian Government to build on this knowledge and strengthen its approach to early and forced marriage.

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