Children's Guardian Amendment (Child Safe Scheme) Bill 2021

Submission from Freedom for Faith

Freedom for Faith provided detailed comments in January 2021 on an Exposure Draft of the above Bill when it was first circulated. We are grateful that the Government has taken into account our comments, and the comments of others, in reshaping the Bill before introduction. We believe the new version[1] is substantially improved and will generally be helpful in implementing important child safety measures. However, there are still some areas where we are concerned about the operation of the current Bill, in particular in the way it accommodates the religious freedom of organisations providing services for children. For that reason, we are writing to bring these matters to your attention.

1. Designation of "child safe organisations"

The current Bill is clearer than the previous version in defining which religious bodies are regarded as relevant "child safe organisations". The Dictionary at the end of the *Children's Guardian Act* 2019 (NSW) will now provide that the definition of "child safe organisation" includes:

> (b) a religious body—
> (i) that provides services to children, or
> (ii) in which adults have contact with children.[2]

However, while this definition is helpful in narrowing the class of religious bodies who need to comply with the law (the previous one was far too broad), it still leaves many very small churches under the definition in which there are no significant child protection issues. For example, the definition would apply even in a congregation where children and adults only mingle in a combined church meeting, when the children are supervised by their parents. Perhaps clause (ii) here could be qualified to read:

> (ii) in which adults have unsupervised contact with children who are not members of their immediate family.

Alternatively, the statute could mirror s.6 of the *Child Protection (Working with Children) Act 2012* which refers to people "engaged in work …that involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work".

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[1] As introduced into the NSW Legislative Assembly on 12 May, 2021.
[2] See the Bill, Sched 1, item [21].

This is indeed how the *Children's Guardian Amendment (Child Safe Scheme)* Bill applies to sporting organisations. The organisations which are deemed to be child safe organisations are those "in which workers are required to hold a working with children check clearance". There seems no reason in principle why religious bodies should be treated any differently from sporting organisations.

There are also some remaining problems with the placement of the definitions. There is now a definition for the purposes of Part 3A in s 8B confirming that "religious body" means what it means in s 15A. But now that the definition of "child safe organisation" has been shifted into the Dictionary at the end, there is no remaining mention of "religious body" in Part 3A, and hence no purpose is served by the definition in that Part. It would seem to be more sensible to move the definition of "religious body" into the Dictionary.

2. Guidelines altering the operation of the Act

The current Bill helpfully alters the direct enforcement of "guidelines" issued by the Children's Guardian, which was a feature of the previous draft. There is still a power to issue guidelines under s 8Q(1), but there is no direct penalty for failure to comply with the guidelines. However, it seems likely that in considering whether the Child Safe Standards are complied with under s 8U etc, the Children's Guardian may "take account" of the guidelines, so they will still have some impact on the operation of organisations.

We remain concerned, however, as mentioned in our previous submission, that the wide scope for formulation of administrative "guidelines" in this area will open the possibility of such guidelines covering matters other than the personal safety of children from physical and sexual abuse that were the fundamental concerns of the Royal Commission. To be clear, we would be concerned, for example, if such guidelines spelled out what can, and cannot, be taught in the context of conveying religious doctrines on sexual behaviour, sexuality and gender identity. Australia is a multicultural society, and all government organisations need to be conscious of the need to respect a diversity of viewpoints on issues of sex and family relationships, some of them religiously based, others which have deep roots in culture. If such matters are to be addressed, they should be dealt with by the Parliament itself in an open discussion, not added to administrative guidelines under a scheme designed to deal with matters of physical and sexual abuse.

While of course supporting Principle 4 of the agreed *National Principles for Child Safe Organisations* (stating that "Equity is upheld and diverse needs respected in policy and practice"), we see this as simply reminding all involved that children from different backgrounds will need processes dealing with physical safety and sexual abuse to be implemented with regard to those backgrounds. We do not see this Principle as providing an opportunity for rules governing complex moral and social issues to be resolved by public servants.

One option that has previously been suggested is the enactment of a "balancing clause" to ensure that guidelines do not require religious groups to act contrary to their beliefs.[3] Another approach would be to acknowledge that a central issue involves the question of what form of "child abuse" the legislation deals with. (The term is used in s 8A(b)(i) when setting out the objects of the new Part 3A added by the Bill.)

We note that "child abuse" is already defined in quite a specific way in the *Civil Liability Act* 2002 (NSW), s 6H (4) as follows:

> 'child abuse' means sexual abuse or physical abuse perpetrated against a child.

This definition was also inserted as part of the Parliament's response to the Royal Commission recommendations. It would seem to be sensible to include a similar definition, or a cross-reference to s 6H, in s 8B of Part 3A to allow a coherent and consistent approach to the issues across the different legislative initiatives. This would go a long way to ensuring that matters dealt with in guidelines issued under the law are confined to the central issues for which the scheme has been set up. No religious organisation we are associated with would object to clear processes and procedures which are aimed directly at preventing sexual or physical abuse of children.

3. Conclusion

In conclusion, we thank the Government for its consultation processes to this point, and encourage the finalisation of this important legislation to take serious account of the concerns expressed in this note, to ensure the widest possible acceptance of and implementation of processes ensuring children are safe from physical and sexual abuse.

About Freedom for Faith

Freedom for Faith is a Christian legal think tank that exists to see religious freedom protected and promoted in Australia and beyond.

It is led by people drawn from a range of denominational churches including the Australian Christian Churches, Australian Baptist Churches, the Presbyterian Church of Australia, the Seventh-Day Adventist Church in Australia, and the Anglican Church Diocese of Sydney. It has strong links with, and works co-operatively with, a range of other Churches and Christian organisations in Australia.

This submission was prepared by Associate Professor Neil Foster and Prof. Patrick Parkinson AM in consultation with the Board.

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[3] See https://lawandreligionaustralia.blog/2021/01/22/child-safety-and-religious-freedom/ for suggestions along these lines.