

**AUSTRALIA BRANCH
(Via CompuServe)**

SA:LLA October 29, 1997 No. 121

Governing Body
Attention: Publishing Committee
Brooklyn

Dear Brothers:

Re: Handling Child Abuse Matters

Thank you for your Interbranch Memo LLJ:LSD October 7, 1997 in response to our Interbranch Memo AB:LLA July 22, 1997, No. 231. We appreciate the points made and the procedure recommended for handling child abuse matters in Australia. There are one or two further points on which we now seek some clarification. In the main, these problems arise out of the instructions in the letter to all elders dated March 14, 1997 (US) and May 1, 1997 (Australia).

The legal position in connection with reporting in Australia is set out in our Memo No 231. In effect, with further information we have to hand, only the Community Welfare Act in the Northern Territories requires elders to report child abuse. That act calls for "any person. . . who believes on reasonable grounds" to report the abuse. He must, "as soon as practicable after obtaining the knowledge that constitutes the reasonable grounds for his so believing, report the fact, and all material facts on which that knowledge is based . . ." We are now convinced that s.316 of the NSW Crimes Act, referred to in our letter No. 231, has no force in child abuse matters as ministers of religion in New South Wales are specifically exempted from reporting by s.22(3) of the Children (Care and Protection) Act 1987.

As mentioned in earlier correspondence, Ecclesiastical privilege is not available in all states, and where it is available, it is only on the basis of a confession according to the ritual of the church. Not all cases of child abuse involve confession. In fact, those cases where the elders are subpoenaed or congregation records are sought, do not usually involve confession.

We have prepared and attached a flow chart of sorts, that we hope will assist in highlighting some problems that still remain in handling these cases, and in particular the consequences of advising the elders in another congregation. when a child abuser moves.

The paragraph numbered 1, in your letter LLJ:LSD of October 7, 1997, refers to the two elders determining if there is any "substance" to the accusation. However, we understand that the procedure for handling gross sins, as set out in *ks 91* at pages 97 and 109, calls for the elders to first determine whether there is substance to an accusation. This point is made in the second paragraph on page 109, then three indented points are listed under that main point. The second and third indented points appear to indicate that there are three circumstances under which the body of elders may take further action. T

second indented paragraph states that if there are two or three witnesses or a confession, then the body of elders would appoint a judicial committee. If there is insufficient evidence, but serious questions have been raised, then two elders would be assigned, it is assumed, by the body of elders, to investigate the matter. Thus, the proposed method mentioned under point 1. in both our memo No. 231 and your reply of October 7, 1997, that is, to have the elder receiving the accusation and the presiding overseer make the investigation prior to meeting with the body of elders, is a departure from normal procedure. Do we understand this correctly?

To follow the regular procedures outlined in *ks 91* in handling child abuse matters or other criminal offences that put an individual under obligation to notify the authorities, the whole body of elders would need to have sufficient knowledge of the matter to determine the qualifications of those who will be appointed to serve on the committee. It would appear that that knowledge would be sufficient to constitute the “reasonable grounds” referred to in the reporting Acts. If they did not have “reasonable grounds”, they would not appoint a committee. Thus if there is a reporting law applicable in that state, all of the elders would be under obligation to report. The others would have reasonable excuse not to report if one or two members of the body did so. Australia has just one small state where reporting laws apply, but there is quite extensive pressure from some groups for mandatory reporting in other states.

Another problem arises when a body of elders is aware of the details of an abuse matter and are not required by the state where they reside to report the matter. The offender now moves to a state where reporting is mandatory and information is forwarded to the new congregation in harmony with the Society’s instructions in the March 14 letter. Perhaps the offender is not disfellowshipped, and is even making good progress with the congregation who is no longer concerned over the past abuse. Now the elders in the new congregation are under obligation to report the matter, since they now have reasonable grounds to believe that an abuse has been committed and has not been reported. So, even though it may be some time ago, and no one in the family is wanting to pursue the matter in the courts, the elders will still be obliged to report it.

This raises an additional question concerning cases where the offences were committed before baptism. The congregation may view the sin as being “dead works” and covered by the ransom sacrifice. However, if the state requires such offences to be reported, should the elders make the report even though they have not handled the matter and the sin was before he came to a knowledge of the truth? It may be a little difficult to report a person who is in good standing and accepted for baptism and against whom the congregation will take no action. Likewise, if the sin was committed after baptism, was handled by the congregation some 10 to 15 years ago, and the offender has lived an exemplary life since that time, should the elders now report this offence because he is now in a state that requires reporting of these offences? How far do we go in obeying

Caesar's law? Or does this come under the heading of "not protecting" the molester from the consequences of his past sins as mentioned on page 29 of *The Watchtower* January 1, 1997?

Step 2, in your Letter of October 7, 1997 and our Memo No. 231 both agree that the elders should then check with the Society to determine whether reporting laws apply. If they do, then the matter should be reported and a record kept in the file. There are two points arising out of this. Firstly, we believe that the accused should be told that the elders are obliged to make a report. We believe it would be better if a direction was given to the elders published in the publications that would notify all the publishers that there may be times when elders will have to report criminal offences, where required by law to do so. Secondly, we are not sure why only a simple statement should be placed in the file. If the matter is to be reported, it is quite likely that the elders will later be called to testify when it is brought to court. If that happens, then would it not be better to have a complete record on file of the contents of the statement made to the authorities? Is there any reason that we have overlooked for not having a complete record of the statement given on file?

In the third last paragraph of your letter of October 7, 1997, when referring to our concerns that ecclesiastical privilege may be lost when the elders are conveying information to another body of elders when a molester moves, you suggest that the elders simply write that "[the abuser] is known as a child molester." However, the March 14 letter says: "The secretary should write on behalf of the elders in the old congregation to the new congregation's body of elders and outline this brother's background and what the elders in the old congregation have been doing to assist him. Any needed cautions should be provided to the new congregation's body of elders." We understand that this information is necessary to enable the elders to give adequate protection to the congregation, as well as help in the abuser's restoration. If we reduce the statement to the words suggested, are we not, at least to some extent, defeating the purpose of the communication?

The March 14 letter also makes the point that an individual "known" to be a child molester has reference to the perception of that one in the community and in the Christian congregation. But where no disciplinary action has been taken by the old congregation, possibly because of a move during the investigatory or judicial process, or because there was insufficient evidence, then we could not say that that person is a "known child abuser," since the only persons having the knowledge are those on the committee. The elders may also need to be very careful to not imply that a person is a "convicted" child abuser, that is, known in the sense that the world views a "known child abuser", and thus make ourselves liable to a charge of defamation. If the only communication the elders receive is a brief statement saying that the person is a "known child abuser", they may assume that the matter has been handled by a court of law, or that he is a current abuser, when in fact he may have committed a single offence many years ago.

Another issue, then, is the report that is to be made to the Society, referred to in the March 14 letter under the heading "Privileges of Service in the Congregation." The letter calls for a report on any person now serving in some Society appointed position who is known to have been guilty of child abuse in the past. The penultimate paragraph calls for detailed specific information. This information is forwarded to the Service Desk, and it is this report that puts the officers of the Society in possession of knowledge that may make them liable to be called upon to testify in court. At the time of writing of our Memo No. 231, we were advised by Crown Prosecutors that the *Crimes Act* in NSW requires a person to report serious crimes. Since that time, we have determined that under the *Children (Care and Protection) Act*, ministers of religion are exempt in New South Wales, and that should protect the Bethel brothers from reporting, but it will not protect them from testifying, or producing records when subpoenaed. As for attorney-client privilege referred to, that would only protect the one brother in Bethel who holds a practicing certificate, but he would certainly not be able to handle all aspects of a case, as some involve questions of a service nature. In addition, he is not always present, and other brothers who know legal matters but who do not hold a current practicing certificate may have to answer the elder's questions when he contacts the Society. As far as the brothers at Bethel are concerned, the problem does not lie in the area of reporting, but is related to subpoenas to produce records, such as disfellowshipping notices and other communications. Since ecclesiastical privilege can only be claimed in connection with confessions, it cannot be claimed in all cases of child abuse. Where the information comes by way of confession, we can try and claim that the disfellowshipping notice is part of the "confessional ritual," but this would be a question yet to be determined by a court of law in this country.

We do appreciate very much the careful thought that has been put into the response to our questions on this subject, as well as the large amount of time that has been taken to sort these matters out, and we want to thank you for this. We would appreciate your further observations on the points made above.

We send our warm Christian love

Your brothers

W. M. LLoyd
For the Branch Committee
AUSTRALIA BRANCH

Encl.

Watch Tower Bible and Tract Society of Pennsylvania
Attention: Governing Body, Publishing Committee
SA:LLA

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xc: Service Committee, Writing Committee, H. V. Mouritz