

# **Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse – Consultation Paper - Best practice principles in responding to complaints of child sexual abuse in institutional contexts - March 2016**

## **1. Best Practice Principles**

The Commission agrees with the Royal Commission's view that organisations require guidance and assistance to enable them to respond, in a child focused and procedurally fair manner, when complaints or allegations of child sexual abuse are made.

As noted in previous consultations, there is consistency of view between the findings and suggestions of the Royal Commission, the ACCG's *Principles for child safety in organisations* and more established child safe organisations schemes operating in other jurisdictions.

Leveraging from the work of the Royal Commission and models in other jurisdictions, and arising from the *Betrayal of Trust Inquiry Report*, Victoria has developed a suite of Child Safe Standards (the standards), which will be mandatory for organisations providing services for children.

Inherent in these standards is the view that not all people are suitable to work with children, and even if the person has a Working with Children Check clearance, a range of other strategies must be in place to assess if the person is suitable.

The Victorian model incorporates seven standards and three overarching principles and is largely consistent with the Royal Commission's nine elements that contribute to making organisations safe for children. The standards include, amongst other requirements, responding to and reporting suspected child abuse, adopting a risk management approach and promoting the participation and empowerment of children. This strong foundation of risk assessment provides a preventative framework by which child safe activities will be based. Although adopting a capacity building approach, the Victorian Minister for Families and Children has indicated that a compliance mechanism for Victoria's Child Safe Standards will be introduced.

The Victorian Government is also developing a reportable conduct scheme, to be administered by the Commission. The scope and breadth of the scheme are currently being considered, using the New South Wales (NSW) model as a frame of reference.

### **Six principles to strong and effective complaint response**

The Commission supports the Royal Commission's *Six principles to strong and effective complaint response* and believes they provide for a robust, child focused, and accountable process. In addition to the suggested content of the complaints handling policy outlined in the Consultation Paper, the Commission recommends that the policy should specify who will make decisions following an investigation, and provide greater direction about what should be recorded and the impact of privacy and confidentiality.

In the context of creating a culture that encourages reports, the Consultation Paper discusses the need to have a code of conduct that sets out 'the behaviour required of all people in the institution'. Possibly consistent with the intent in this section, is the need to outline what behaviour is not acceptable. Further, organisations must be encouraged to consider the inherent risks in their organisations and activities and ensure their code of conduct addresses these specific risks.

Referenced by the Royal Commission on many occasions is the low disclosure rate of children who have been sexually abused. On this basis, *actions that institutions can take to encourage and support a culture of child safety* may go a step beyond educating staff and volunteers to deal with disclosures, to identifying the signs of abuse and picking up on indicators and children's behavioural cues so that action to protect the child can be taken even before a disclosure is made.

### **Aboriginal children, young people, families and communities**

The list of actions that institutions can take in the Consultation Paper incorporates ensuring responses are culturally appropriate. The Commission would recommend strengthening this suggestion to being culturally aware and sensitive and being Aboriginal and Torres Strait Islander inclusive.

While welcoming a focus on 'responding to children with diverse experiences and needs', organisational policy must first pay attention to creating a culturally safe environment that meets the needs of Aboriginal and Torres Strait Islander children, as this creates a foundation for complaints to be brought forward.

The vast over-representation of Aboriginal children and young people in the out of home care system, and the continuing rapid growth, demonstrates the need for consideration to be given to particular responses to child safety in this regard. There are key steps to developing a culturally sensitive service, including employing and engaging with Aboriginal and Torres Strait Islander people, and providing regular cultural training to staff and volunteers to develop a deep understanding of the impact of colonisation and intergenerational trauma for Aboriginal children and their families.

The joint Commission and the Department of Health and Human Services *Taskforce 1000 Project*, which reviewed the cases of 980 Aboriginal children in Victoria over 2013-15, has revealed that a high number of children in care had parents who were also in care. Culturally appropriate services providing family healing services and counselling in an holistic way have been found to be critical elements in the prevention of sexual abuse, and building the resilience of children.

Taskforce 1000 also highlighted the distinction between children in care disclosing sexual abuse and therapeutic and investigative response. For some children delays in investigations created barriers to receiving timely counselling services; in one family's case, a delay of five years.

### **Children feeling listened to and believed**

It is important to ensure the design of systems and pathways to support complaints is differentiated to meet the needs of children of varying ages and maturity, backgrounds and ability to understand the concepts and process of raising a concern or complaint. A vital element is that children feel heard and believed. When children participate within an organisation and feel empowered and respected, they are more likely to think they will be listened to. In recognition of the need to ensure the most vulnerable children's voices are heard, the Commission seeks out the views of children and young people through external oversight in the form of an independent visitors program and conducts visits to children and young people in out of home care, youth justice and Secure Welfare Services. These additional methods of independent external oversight facilitate complaint making and resolution.

It is vital that vulnerable children and young people in the care of the state be provided with access to a trusted and independent service to which they can make a complaint. The Commission's '*...as a good parent would...: inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*' demonstrates the ongoing need for such a mechanism and recommended that:

A complaints body, which is independent of the Department (funder) and Community Service Organisations (service provider), must be established to hear directly from children. Additionally, Quality of Care (QoC) investigations should be delegated to such an

independent complaints body. The scope of QoC investigations must be expanded to include allegations of child-to-child abuse in residential care. (p. 21).

## 2. Oversight of complaints handling – reportable conduct schemes

Following the recommendation contained in the *Betrayal of Trust Inquiry Report*, the Victorian Government committed to the development of a reportable conduct scheme and has announced the Commission will be the body responsible. Work is currently underway to design the scheme and develop legislation.

Given the NSW reportable conduct scheme has evolved over the last 16 years, and has widespread support from government, government agencies and organisations, it is the common-sense foundation from which to start. The Victorian Government has consulted extensively with the NSW Deputy Ombudsman in designing the Victorian model, as have other jurisdictions. This level of continuity, albeit with jurisdictional nuancing, is likely to provide a largely consistent national approach and potentially reduce the potential for differing schemes, as has developed with Working with Children Checks (WWCC), which now seeks to gain greater national consistency.

The Commission welcomes the recent COAG agreement, in-principle, to harmonise reportable conduct schemes nationally, similar to the current model in operation in NSW and announced in the ACT and Victoria. We look forward to the Commonwealth's leadership in this area.

Questions posed in the Consultation Paper regarding features of the scheme and whose conduct should be subject to oversight is currently under consideration in Victoria. KPMG have been retained by government to undertake limited consultation and deliver an options paper. The Commission has participated in this process and awaits further advice from government.

The Commission agrees with the view of the NSW Ombudsman that the definition of reportable conduct is a critical component of the scheme to ensure the right behaviours are targeted – if the bar is set too high, risk will be missed, if it is set too low, a scheme may be flooded with issues that relate more to performance management, rather than abuse.

Broadly speaking, key features of a scheme may include:

- acknowledgement that a reportable conduct scheme sits within the continuum of child safe processes
- a closed loop of reporting to the reportable conduct body, incorporating reporting of the conduct, processes that will be undertaken to conduct an investigation, investigation analysis and outcomes, and remedial action taken
- provision of guidance manuals
- access to training to assist capacity building and process development
- provision of ongoing guidance and advice
- arrangements, similar to the NSW class or kind agreement, which enables the operator to target resources and effort to those organisations which most need it.

The *closed loop of reporting* enables the operator of the scheme to identify process or capacity concerns in regard to an investigation or investigation outcome and provide guidance, and offer, or require additional processes.

The NSW's inclusion, in some domains, of conduct *outside the course of the person's role within the organisation* requires careful consideration. The low rate of identification and disclosure of child sexual abuse is well understood, so having the capacity to act on identified behaviours outside of the person's role in an organisation could minimise the potential for gaps to exist in responding to concerns. Organisations, particularly smaller organisations, will undoubtedly require significant levels of support and guidance if undertaking such an investigation, as it is an additional layer of complexity.

The Consultation Paper indicates child-to-child sexual abuse will be considered in a separate project. In its response to the *Issue Paper Institutional Responses to Child Sexual Abuse in Out Of Home Care*, the Commission submitted its concern regarding the rate of child-on-child sexual abuse in out of home care, the lack of assessment and placement matching that may have prevented such abuse, together with current levels of oversight, and remedial and systemic action following incidents. This issue remains a significant concern for the Commission and we look forward to direction from the Royal Commission on this matter.

### **Information sharing**

As the only current operator of a reportable conduct scheme, advice from the NSW Ombudsman is vital to understanding operational imperatives of the scheme. The Commission has been advised that prior to legislative amendment enacting Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), the NSW Ombudsman was in many ways a recipient of information of reportable conduct notifications, and did not have the capacity to act on the information to protect children.

When considering the intent of the NSW reportable conduct scheme is *to work with agencies to build their capacity to respond to complaints of child abuse*<sup>1</sup>, lawful and tightly controlled sharing and exchange of information by designated agencies relating to the safety, welfare or wellbeing of children and young people (with or without their consent and whether or not the child is known to community services), is needed to enable the right agencies to know relevant information; including police, child protection and the Children's Guardian, who operates the WWCC function.

In addition, having direct access to police and child protection databases, the NSW Ombudsman has unique information holdings and can determine who needs what information to assist in keeping children safe. This role of connecting the system cannot be underestimated.

An issue for consideration in the development of the Victorian model is what other agencies can do with information that may be provided under an information sharing provision; in particular, in the Victorian WWCC, only a criminal charge triggers re-assessment of a person's WWCC eligibility. In addition, there is currently work being undertaken at a national level to harmonise the approach across jurisdictions for the Working with Children Checks to provide mutual recognition of state bars to reduce the risk of perpetrators being able to cross jurisdictions undetected.

### **3. Access to advice and support for institutions**

As the future oversight body for child safe standards and the future operator of a reportable conduct scheme, the Commission, together with regulators of government funded organisations, recognise the significant level of assistance organisations need to meet requirements of the two schemes and that online resources alone are insufficient. It is also recognised that the provision of advice and support will need to be ongoing; to support continuous improvement and knowledge sharing of best practice by all organisations that engage with children, and not only associated with the implementation phase of the scheme.

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<sup>1</sup> Part 3A Ombudsman Act 1974 (NSW)

The Commission takes heed of advice from the NSW Deputy Ombudsman that their reportable conduct scheme, which operates largely with regulated organisations, has as a foundational element, the provision of high levels of guidance and support to organisations when they are managing a reportable conduct allegation. It can reasonably be expected that small non-regulated organisations, with limited experience in dealing with a significant allegation or complaint, and with limited infrastructure, will require even greater levels of support.

Given the number and breadth of organisations, a combination of strategies will be required to provide organisations, including smaller ones, with access to guidance and support. In regard to Child Safe Standards, the Commission is currently mapping key peak bodies that would be well placed to support and potentially provide training for organisation under their remit and be a conduit for information and resources released by the Commission. The issue remains how to support the considerable number of organisations which do not currently have a peak or industry body yet require effective channelling of communication and support.

To support organisations to become child safe, the Commission is developing an engagement strategy for the large number of organisations without existing relationships with government. The Commission anticipates delivering a range of capacity building support information, newsletters and resource materials, utilising a variety of mediums. The Commission currently operates a telephone and email information line for organisations and resources available for download on the website. *A Guide for Creating a Child Safe Organisations* can assist organisations to understand their obligations and assess their current systems and processes against the child safe standards and outlines, in a user friendly way, how to work towards compliance. A range of tip sheets on elements of the Child Safe Standards are also available.

The Commission recognises the need to develop differentiated resources and training, and will seek to work with peak bodies and industry groups to develop these. Training and information tailored to sectors will have a better interest and retention rate and will have an increased likelihood of achieving behavioural change and an enduring culture of child safety.

Leadership by boards of management is a vital component in driving organisational change, and achieving and sustaining a child safe organisation. As such, resources will be well targeted to increasing their understanding and responsibilities in regard to Child Safe Standards, reportable conduct and complaints handling.

The Commission is also investigating the potential to develop an online platform on which organisations could be invited to become a member of a community of practice of like services, in which they can share ideas and provide support to each other, as well as being the major mechanisms for the Commission to deliver information. Such a platform may also enable the Commission to deliver eLearning and tutorials.

The Department of Health and Human Services has also developed a range of tools for use by organisations. It is also clear that a number of private, fee for service, providers are delivering education and training on child safe standards and managing complaints or allegations on behalf of organisations. As this fee for service provider base will remain and is likely to expand, quality assurance mechanisms, such as accreditation, or endorsement of training packages, would enhance consistency of content, providing reassurance for organisations.

It is vital that clear guidance is provided to organisations on the continuum of child safety, from prevention, to risk management, identification and issue management, including reportable conduct once this initiative is in place. In regard to complaint handling, the Commission also anticipates the need to develop detailed manuals about the process of investigations, and notes the NSW Ombudsman's resources in this regard, together with those outlined in the Consultation Paper.

In the context of both a reportable conduct scheme and Child Safe Standards, two particular areas of concern are noted. Firstly, few organisations are equipped or capable to manage a disclosure of sexual abuse by a child – and many organisations will never need to deal with such an issue. Inappropriate management of a child's disclosure may re-traumatise a child and result in a range of negative consequences. How these organisations will be supported and where they can seek support requires careful consideration to ensure children's safety is assured.

Secondly, organisations require guidance on how to proceed when a police investigation is occurring, or is likely to occur. Organisational decision making in regard to whether they should report to police, must not be a protracted one and must be underpinned by concern about alleged behaviour, rather than if they think a criminal offence has been committed – determining criminal behaviour is a role for police. The police should be supported to respond to complaints relating to the sexual abuse of a child as a matter of priority. Affording priority to these cases is both in the best interests of the child concerned as well as in the best interests of protecting the safety and wellbeing of other children in the organisation. Prioritising these cases will also be of assistance to organisations in determining their own response to the allegation. A recommendation from the Royal Commission relevant to prioritising police action in cases of alleged sexual abuse of a child would be welcome.

The Consultation Paper notes that investigations be undertaken by trained investigators, may be difficult for small organisations to achieve without cost. The development of 'hubs' to potentially share resources, as is in operation in NSW, may be a way for smaller organisations to share the financial burden of training and development, as well as complaints management.

Notwithstanding the context in which organisations potentially 'compete' against each other to obtain government funding, it would be interesting to explore incentives that may be possible to attract larger, more sophisticated organisations to mentor smaller, less developed organisations. It is vital that we leverage off some of the very well developed, mature child safe systems in operation in some organisations. The NSW model of Class and Kind Agreements, in which the Ombudsman is assured the organisation has high quality systems and procedures and is exempted from reporting some types of reportable conduct to the Ombudsman, could potentially include a requirement to provide assistance to another organisation.

### **Diverse communities**

The Commission has been advised by members of its Culturally and Linguistically Diverse Strategic Partnership Advisory Committee (CALDSPAC), that there will be challenges as to how CALD community groups, including isolated rural organisations, will access support to develop their policies, and how investigations will be dealt with in a way that suits the particular needs of the individual or community. Nuanced information relevant to the cultural background will be vital to ensure its applicability and acceptance by communities, taking into consideration translations may be grammatically correct but misinterpret cultural norms. Issues raised have included not being literate in written English (or their native language), and therefore requiring alternative mechanisms in place to address policy development, training and complaints mechanisms. Other issues raised, centred around the lack of means to make a complaint such as internet access; phone access, and if Telephone Interpreting Services could be used to make a complaint via SKYPE.

### **Government organisations**

The Royal Commission advises 40 per cent of matters brought to their attention are about government services. The Commission is concerned about the lack of government leadership as a model operator in regard to child safe practices and complaints management and a focus on compliance by non-government organisations. Through its oversight functions, the Commission has identified poor practices by government agencies, resulting in harm to a child, a lack of follow up and accountability. There is a risk double standards may appear to apply within the schemes.