



Government of **Western Australia**
Department of **Education Services**

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Ms Lisa Baker, MLA
Chair
Joint Standing Committee on the Commissioner for Children and Young People
Parliament of Western Australia
Parliament House
PERTH WA 6000

Dear Ms Baker

JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE INQUIRY INTO THE FUNCTIONS EXERCISED BY THE COMMISSIONER

Thank you for the opportunity to provide a submission to the Joint Standing Committee on the Commissioner for Children and Young People (the Committee)—Inquiry into the functions exercised by the Commissioner for Children and Young People (the Commissioner).

This submission provides background information relevant to complaints about child abuse in the following areas:

- Department of Education Services (the Department) oversight of child abuse complaints functions in relation to school children
- The Department's response to the Special Inquiry into the St Andrew's Hostel Katanning and the Corruption and Crime Commission WA Report (2012)
- The Royal Commission into Institutional Responses to Child Sexual Abuse

The focus of this submission is on the recommendations proposed by the recent *Review of the Commissioner for Children and Young People Act 2006* (the Review), specifically:

- The manner in which the Commissioner's proposed child abuse complaints support function should operate.
- The impact the proposed child abuse complaints support function may have on the Commissioner's existing functions.

Thank you for the opportunity to provide the perspective of the Department to the Standing Committee.

Yours sincerely

RICHARD STRICKLAND
CHIEF EXECUTIVE OFFICER

16 March 2015

**Submission to the Joint Standing Committee on the Commissioner for Children and Young People:
Inquiry into the functions exercised by the Commissioner for Children and Young People**

Date

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Appearance before the Committee

I do not wish to appear before the Committee to present my case however I would be available should the Committee wish to discuss further the Department's submission.

Background

The information outlined below describes the functional areas of the Department that are relevant to the discussion of the two matters which are the focus of the Standing Committee's inquiry. The Department has key responsibilities in the oversight of complaints management in non-government schools in teacher registration and registered training organisations delivering vocation education to school-age children, the latter jointly shared with the national regulator, the Australian Skills Quality Agency (ASQA).

The information is also provided to highlight the agency's role in the State's child protection system both from the perspective of preventing child abuse and navigating and managing complaints of child abuse arising from the administration of various regulatory schemes.

Regulation of non-government schools

The Department's role is to support the Minister for Education in the development and implementation of policy for the non-government school sector and in the registration, re-registration, and inspection of non-government schools. It is not a provider of schools or an employer of teachers. Governing bodies of non-government schools are responsible for the management of complaints about misconduct and child abuse, including ensuring compliance with legislation requiring mandatory reporting.

The Minister, on advice from the Department, determines registration standards and other requirements for non-government schools¹ including a complaints management standard. The

¹ The *Non-Government Schools in Western Australia Registration Standards and Requirements*, including complaints management and critical incident reporting, can be accessed at the following link on the Department's website: http://www.des.wa.gov.au/schooleducation/nongovernmentschools/info-ngs/School_registration/renewal-registration/Documents/2014%20Registration%20Standards%20and%20Requirements.PDF

Department has regulatory oversight of non-government schools with the object of the current registration procedure being to ensure that the non-government school meets the standards, in particular the school demonstrates through its stated education philosophy, policy, organisation and curriculum that it will protect the safety and welfare of its students at all times and deal appropriately with allegations of child abuse.

Independent schools are inspected by the Department to ensure that the standards are met, including examination of the compliance of the school's complaints management policy with relevant legislation and the administration of complaints regarding alleged misconduct towards or abuse of children; processes for timely investigation of complaints relating to misconduct or abuse; coordination of all disciplinary processes; completion of internal risk-assessments in relation to safety and welfare of students; and provision of proactive professional learning strategies related to professional standards. The standards also require that information about the process for raising concerns and how they will be dealt with must be made available to parents and students (for example in the parent handbook or on the school's website) as well as staff.

The system agreement between the Minister and the Director of Catholic Education in WA includes a provision by which the Minister delegates to the Catholic Education Commission of WA, the function of registration or renewal of registration of schools in the system. The Commission's internal processes and system documentation relating to the registration and renewal of registration of Catholic schools are monitored and audited by the Department to ensure consistency and comparability with the Department's own processes and documentation.

The *School Education Act 1999* has been amended recently in response to reports such as the inquiry by the Hon. Peter Blaxell and the research papers and case studies published by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). As a result the Minister for Education is now required to set a specific standard related to the arrangements in non-government schools for the prevention of, and responses to child abuse. This new standard will draw out and improve all the relevant requirements, criteria and guidelines from the current standards, into one location in the registration standards. This standard will require that each school's policies, procedures, practices and records – in their entirety – put the best interests of the children first, provide genuine protection and are child friendly.

The Minister has commenced the process of consultation on the new standard with the non-government school sector, through the Department. The new standard affects schools applying for initial registration or change of registration from 2 February 2015 and schools whose registration is due for renewal on or after 2 February 2016.

Under transitional provisions, the new standard does not affect schools whose registration is due for renewal on or before 1 February 2016. As a result, the Minister for Education has asked the Department to assist non-government schools in their efforts to improve levels of care in 2015. This will involve a focus on the existing aspects of the registration assessment criteria related to the care and protection of children that are currently represented across the criteria. There will be a particular focus on governance and accountability, curriculum, level of care, staff and management, physical environment and related aspects of complaints management. Where critical incidents such as child abuse or school reviewer reports indicate a high level of risk to children, further action will be taken.

Complaints about misconduct and abuse received by the Department, that are relevant to external agencies such as the WA Police, Department for Child Protection and Family Support (DCP&FS),

Corruption and Crime Commission (CCC) and the Department of Education (DoE), are reported without delay. Contact with those agencies is maintained to determine when actions under the regulatory scheme for non-government schools can be initiated, if required.

Review of Independent Public Schools

The Department reviews 'Independent Public Schools' (which are government schools) at the request of the Director General of the Department of Education however the Department does not have oversight of complaints management or child protection matters. The government school sector has access to the integrated functions and oversight of the Department of Education's Standards and Integrity Directorate in relation to complaints about misconduct and child abuse. That Directorate administers and investigates complaints, coordinates disciplinary processes, completes internal risk assessments of staff and leads the development of policy and professional learning related to professional standards and conduct for Department of Education schools.

Administration of the Teacher Registration Board of Western Australia (TRBWA)

The Department supports the TRBWA with the staff, facilities and resources it reasonably requires in order to perform its statutory functions of teacher registration, teacher discipline and accreditation of initial teacher education programs.

Under the *Teacher Registration Act 2012* (TRA), commenced on 7 December 2012, any member of the public may make a complaint to the Board about the conduct of a registered teacher, or a person who was a registered teacher at the time of the alleged conduct.

Also of interest are employer notifications about any registered teacher no longer working at the particular educational venue because of an investigation instigated by the employer in relation to serious misconduct. Employers (governing bodies in the case of non-government schools) are required to notify the TRBWA of such matters and the range of matters that must be reported to the TRBWA has widened under the TRA. After considering the information in the notice, the Board may decide to formulate a complaint.

Complaints made to the Board and formulated by the Board may be assessed and investigated by the Board as appropriate, noting that the Board must regard the best interests of children as paramount in the performance of the function. It should also be noted that information relevant to external agencies (WA Police, DCP&FS, CCC, DoE) would be reported without delay and contact maintained with them to determine when actions under the regulatory scheme for teachers could be initiated if required.

The Board is to deal with the complaint in one of five ways:

- (a) reject the complaint as inappropriate or trivial
- (b) make an interim disciplinary order
- (c) refer the complaint, together with a report, to a disciplinary committee to deal with
- (d) if the complaint is in respect of the impairment of a registered teacher, refer the complaint, together with a report to the impairment review committee
- (e) refer the complaint to the State Administrative Tribunal

If a child or group of children is at risk of injury, or harm to any person, or if a teacher is charged with a sexual offence involving a child, an interim disciplinary order (IDO) can impose condition(s) on, or suspend the teacher's registration. An IDO must be referred by the Board to the State Administrative Tribunal.

Note that the Board may determine that the nature of serious misconduct engaged in by a teacher may render him or her unfit to be registered. Without registration, the teacher is not lawfully able to be employed as a teacher or seek employment as a teacher. This is a significant protection for children because without this provision in the TRA, a person investigated by a school for serious misconduct and no longer working at that school would maintain their Working with Children Card because they had not been charged or convicted and thus would still be able to gain employment in another school.

The TRA requires a registered teacher to give written notice to the Teacher Registration Board no later than 14 days after an interim negative notice or negative notice is issued to the person, under the *Working with Children Check (Criminal Record Checking) Act*. Under these circumstances a teacher is no longer entitled to be registered, their name is removed from the Register of Teachers and they are no longer entitled to teach.

Administration of the Training Accreditation Council (TAC)

The Department provides the staff, services and facilities to enable TAC to perform its statutory functions in relation to the registration and regulation of vocational education and training (VET) providers, including those who deliver VET in schools in Western Australia. Note that some providers of VET in schools are regulated by ASQA.

Any complaints about child abuse made to the Council would be reported to relevant external agencies (WA Police, DCP&FS, CCC, DoE) without delay. Further action may be taken by TAC under the fit and proper requirements of the *Vocational Education and Training (General) Regulations 2009*.

The Department's response to the Special Inquiry into the St Andrew's Hostel Katanning and the Corruption and Crime Commission Report WA 2012²

While the terms of reference for the Special Inquiry and the CCC Report did not extend to non-government schools, the recommendations of the inquiry, and the status reports of the State Government's response to them, were nonetheless highly relevant to children in non-government schools, particularly in boarding facilities. The Department is of the view that children in non-government schools should receive the same level of protection as their counterparts in government schools. The recommendations of both reports thus informed:

- the independent review of the non-government school registration standards and subsequent revisions to strengthen the requirements related to child protection policies including mandatory and critical incident reporting of complaints about child abuse
- coordination of responses to child protection information with other government agencies
- the drafting of the *Teacher Registration Act 2012*
- the drafting of the *School Education Amendment Act 2014*

The Royal Commission into Institutional Responses to Child Sexual Abuse

The CEO of the Department was called to appear as a witness at a public hearing of the Royal Commission in Western Australia from Monday 19 May to Friday 20 June 2014. The hearing

² Corruption and Crime Commission Western Australia. (2012). *Report on the investigation of alleged public sector misconduct in relation to contact with students and accessing of child pornography by a Department of Education employee*. Perth: Corruption and Crime Commission Western Australia.

examined the response of an independent school in Perth to concerns raised between 1999 and 2009 by teachers and others about another teacher. The findings of the case study have yet to be published however the Department's involvement provided a further opportunity to reassess its role as the regulator to determine what more could be done in relation to complaints about child abuse in non-government schools.

The interim findings and the expert research commissioned by the Royal Commission continues to inform the Department's process of improvement in regulatory practices. In particular, the need for a preventative approach to child abuse and the reporting of complaints at the stage of misconduct or grooming, which precedes child abuse. For example, the Department has engaged expert consultants and hosted presentations and symposia for professional learning for staff and independent school reviewers about situational prevention of child abuse through child-safe organisational principles. To facilitate shared understandings, invitees have also included the Commissioner for Children and Young People, staff from her office and officers from other government agencies.

Issues under inquiry

In the context of the Committee's inquiry, the goal of the State's child protection system is to ensure that there are 'no closed doors' for the disclosure of child abuse. It may have seemed administratively efficient to create a 'one stop shop' for complaints about child abuse however it is unlikely that a 'one size fits all' office could be adequately resourced and located to meet the complex notification and support needs of all children and young people across the State. In any case, a network of government agencies already exists for this purpose and it appears that it is the awareness and knowledge of child abuse and reporting mechanisms that has been identified as one of the aspects lacking in organisations and the community in general.

In addition, it is in the best interests of children for intervention related to misconduct/grooming to occur at the earliest possible opportunity. The roles of the Department, TRBWA and TAC in regulating complaints about misconduct/grooming in educational venues is significant however several reports have also identified that knowledge of misconduct and grooming is also lacking in organisations and the community in general.

There is widespread acceptance that preventing situations that permit child abuse to occur must be a strong focus of any organisation involving children however knowledge of the characteristics of child-safe organisations has also been identified as lacking in organisations, as is the consumer knowledge in the community of the expectations we should have of a child-safe organisation.

With regard to the recommendations related to the Committee's priority for 'the Commissioner to become a trusted avenue for people to be made aware of the issues surrounding child abuse—and to raise their concerns about child abuse', the Department is of the view that raising awareness and understanding of mechanisms for making complaints about child abuse, misconduct and grooming could be promoted by the Commissioner as part of her complaints support function. This role would be complementary and add value to existing arrangements across the system.

The manner in which the Commissioner's proposed child abuse complaints support function should operate.

Education and outreach programs for children and young people about how to disclose any child abuse that occurs while they are in the care of a government agency or service provider

The Department supports the role of the Commissioner in developing education and outreach programs for children and young people about how to disclose child abuse. The Department would

welcome the Commissioner's expanded role in this area, particularly for children and families in at-risk metropolitan, rural and remote locations serviced by non-government schools.

The Department's legislated functions limit its capacity to provide broad education and support programs about complaints mechanisms related to child abuse and grooming.

The finding of the Royal Commission, and various other inquiries, is that children and families did not have awareness or knowledge of how to initiate reporting within organisations or with the child protection system, particularly at the stage when early intervention may have prevented escalation from misconduct/grooming to abuse. Therefore, universal and targeted education programs and support to navigate effectively the available complaints mechanisms would be of benefit to children, young people, parents and carers. It would also be beneficial to organisations that do not have the wherewithal to provide this service to the children and families in their care. For example, approximately half of the non-government schools regulated by the Department do not have the resources of a system to support such activities.

It would seem to sit well with the Commissioner's functions that she ensure that all children, parents and members of the broader community are supported in their awareness and understanding of the mechanisms for making a complaint about child abuse and notifications of misconduct/grooming. It is consistent with the approach taken by the Commissioner in advocating child-and parent-friendly complaints systems to ensure the participation of children and young people in decisions that affect their lives. This effectively contributes to an organisational culture that values paying attention to and respecting the right of children to be heard. Knowledge of the existing education programs and resources published by the Commissioner has informed the Department's approach to the regulation of complaints management.

Further, organisations such as non-government schools would benefit from a better understanding of the arrangements for the prevention of child abuse through child-safe organisations which is consistent with the Commissioner's strategic priority for 2015 - 'supporting organisations to be child safe and child friendly'. This approach would complement the expectations and aspirations of the Minister's new non-government school registration standard regarding the arrangements for the prevention of child abuse and response to any such abuse which may occur. It would also contribute to the Government's mission to protect all children and young people in Western Australia from abuse and neglect.

Receiving complaints from children and young people, or adults acting in good faith on their behalf, about abuse alleged to have occurred in a government agency or service provider, and referring such complaints to the relevant investigative authority/s

The existing legislative schemes of the various agencies that form the State's child protection system are complex and interrelated. The Commissioner should not duplicate the existing functions of agencies receiving complaints however, should a complaint be received by the Commissioner, her office should be well informed about and have appropriate relationships with the agencies to which complainants should be referred.

If a child protection matter is disclosed to the Commissioner or her office, direct referral to the most relevant agency would be essential to avoid adding unnecessarily to the burden already being borne by children, young people, their families and the notifier.

Monitoring the way government agencies deal with complaints of child abuse referred by the Commissioner or otherwise received by them

The Act provides broad functions for the Commissioner to be responsible for advocating for, promoting and monitoring the best interests and wellbeing of children and young people in Western Australia. Specific functions relate to complaints made by a child or young person. Stipulating child abuse as a particular category of complaints to be monitored by the Commissioner would be consistent with the existing function. Given the life-changing consequences of such complaints, this oversight would add value to the State's child protection system. The Department would welcome the Commissioner's oversight of its regulation of the management of complaints about child abuse and misconduct/grooming in non-government schools and in relation to the role of the TRBWA in receiving and investigating complaints about teacher misconduct that have a child protection dimension.

In any case, if the Commissioner were to adopt a support and referral role, as discussed earlier, it would require the Commissioner to have a full knowledge of the complaint mechanisms across government available to children and others wishing to make complaints about child abuse. This would logically put the Commissioner in a good position to have independent oversight of the extent to which the combined coverage across government is accessible, child-friendly and makes available the kinds of support necessary for those involved. This function could be more like a children or youth ombudsmen and could ultimately quality assure the coordination and complementarity of the relevant agencies, an outcome that would be welcomed by the Department.

This would be consistent with the Committee's second priority, that the role of the Commissioner will need the support of, and be supportive of, the existing child protection framework.

Concluding remarks

Under the *School Education Act 1999* the Department has regulatory oversight of the manner in which non-government schools deal with complaints of child abuse and misconduct. The Department will continue to strengthen its role and would welcome the proposed oversight of the Commissioner in this regard.

The Department agrees that it would be advisable to give further consideration to the child abuse complaint support, referral and monitoring service, when the research and full findings and recommendations of the Royal Commission can be taken into account. A high quality evidence-base about the prevention of and responses to child abuse is fundamental to policy development. It is however extremely difficult and resource intensive to conduct research in this area. The expertise being garnered across Australia by the Royal Commission will greatly assist the future policy directions of the State Government.

The Royal Commission's preliminary findings and the experience of the Department, makes it clear that prevention of child abuse ought to be a high priority for all organisations. The Department is strongly of the view that it must be recognised that grooming is a serious breach of the code of behaviour expected by the community and a precursor to child abuse. As such it is a matter about which complaints should be made before there is an opportunity for it to escalate to worse forms of child abuse. Raising awareness and understanding of mechanisms and support for making complaints about misconduct and grooming should be promoted by the Commissioner as part of the complaints support function.

The Department will continue its positive working relationship with the Commissioner and her office and maintain a watching brief on the Royal Commission's findings and publications.