



**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

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# Consultation Paper

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Best practice principles in responding to complaints  
of child sexual abuse in institutional contexts

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# 1. Introduction

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Our policy and research work, case studies and private sessions to date tell us that, over decades, many institutions have failed to have effective and accountable processes for responding to concerns about child sexual abuse. There is no doubt this failure has meant that, on occasion, offenders have not been brought to account and children have not been adequately protected.

The Terms of Reference of the Royal Commission note that:

*Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.*

They also require the Royal Commission to inquire into a number of matters including:

- a) *what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;*
- b) *what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts; and*
- c) *what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse.<sup>1</sup>*

An examination of what constitutes best practice principles for institutions facing complaints of child sexual abuse is central to our work. The information and evidence we have received highlights problems in the way some institutions have handled complaints of child sexual abuse. In some cases, institutions had no policies in place to guide staff about how to respond and in other cases, policies existed but were inadequate or ignored.

There is now a large body of experience and expertise around complaint handling in a range of contexts including the public and private sectors and not-for-profit organisations. To this body of knowledge we are adding the insights we have derived from our case studies, private sessions and research.

Institutions vary in the work they do, their size, and the extent of legislative and other oversight of their activities. We are seeking your submissions on best practice principles and their implementation to allow for tailoring to fit differing contexts and circumstances in which institutions operate.

## 1.1 Consultation

In developing this paper, we have consulted a selection of individuals and organisations with expertise in child protection, complaint handling and investigations. We heard a range of

views about the practical issues and challenges that different types of institutions have in responding to complaints about child sexual abuse. We would like to express our appreciation to all those who contributed to the development of this paper.

## 1.2 Terminology

### Accused

In this paper, ‘the accused’ refers to a person who is the subject of a complaint received by the institution who is alleged to have:

- committed child sexual abuse that constitutes a criminal offence
- breached the institution’s code of conduct
- displayed inappropriate behaviour towards a child or children in the care of the institution.

### Child

As in our Terms of Reference, the term ‘child’ has the same meaning in this paper as under the United Nations Convention on the Rights of the Child of 20 November 1989. Under this definition, a ‘child’ is every person under the age of 18 years.

### Child sexual abuse

The term ‘child sexual abuse’ is any act that exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography.<sup>2</sup>

Child sexual abuse also includes:

- grooming (see definition below)
- child sexual exploitation - where children are coerced or manipulated into engaging in sexual activity in return for something (such as alcohol, money or gifts)
- child-to-child sexual abuse.

### Complaint of child sexual abuse

In this paper, the term ‘complaint’ is intended to cover not only complaints about child sexual abuse that are expressed as such, but all allegations including reports, suspicions, concerns, alleged breaches of the code of conduct and other disclosures of behaviour that may constitute or relate to child sexual abuse.

Complaints may be made about an adult perpetrating sexual abuse or a child with sexually harmful behaviours.

Concerns about child sexual abuse often come to light following an observation or disclosure of inappropriate behaviour rather than as a result of a complaint. Where the disclosure is made by a child – either the victim, or a friend or peer of the victim – the

language used is unlikely to identify the matter as a complaint and it may be a non-verbal disclosure.

## Private session

A private session provides an opportunity for a person to speak directly with a Commissioner and tell their story of abuse in a protected and supportive environment. We have conducted more than 4,645 private sessions to date.<sup>3</sup> During our private sessions, we have been told how institutions responded to complaints of child sexual abuse. (See Section 1.3 for more detail on private sessions).

## Grooming

‘Grooming’ in an institutional context refers to actions deliberately undertaken with the aim of engaging and influencing a child, staff and/or volunteers of the institution, or in some circumstances members of the child’s family, for the purpose of sexual activity with a child. Grooming actions are designed to establish an emotional connection to lower the child’s inhibitions. Inhibitions are lowered via the development of a relationship with the child, and increased opportunity to see the child. In this respect grooming involves psychological manipulation that is usually very subtle, drawn out, calculated, controlling and premeditated.<sup>4</sup>

Grooming may occur in a diverse range of institutional and other settings, and in incremental stages. Typically, grooming involves a chronology: accessing the victim, initiating and maintaining the abuse, and concealing the abuse.<sup>5</sup>

The majority of Australian jurisdictions now have grooming offences, which vary in scope and application. Grooming offences may target online or other electronic communications, subjecting children to pornography, and/or using intoxicating substances to engage children for the purpose of sexual activity.<sup>6</sup>

## Institution

We use the term ‘institution’ to refer to all kinds of institutions as defined in our Terms of Reference. We highlight where issues are relevant to some kinds of institutions and not others, or where they affect institutions differently.

## Investigation

‘Investigation of complaints of child sexual abuse’ is used in this paper to refer to the process of inquiry that begins after a complaint has been received and the institution performs a risk assessment.

Before commencing an investigation, the institution must assess whether there are any legislative, contractual or other requirements to report to an individual or agency or to conduct the investigation in a prescribed manner. (See Sections 2.3 to 2.5 for more detail).

If there are prescribed requirements, the investigation must take place in accordance with them. This paper provides guidance to institutions that are not currently required to conduct investigations in a prescribed manner.

For the purposes of this paper, ‘investigation’ does not include a police investigation. It refers to investigations conducted by or on behalf of the institution associated with the complaint.

## Responding to complaints of child sexual abuse

‘Responding to complaints of child sexual abuse’ is a broad term used in this paper to refer to a number of actions an institution should take when it receives a complaint of child sexual abuse. Responses will vary depending on the nature of the complaint and can include examples from the following table.

<b>Identification of a complaint</b>	This may involve listening to and taking seriously any child or adult survivor who indicates possible child sexual abuse. It may also involve noticing any behaviour by staff members, volunteers, visitors or carers that may be considered ‘grooming’, child sexual abuse or a possible breach of the code of conduct. It may involve receiving a written complaint.
<b>Assessment of a complaint</b>	This will determine action to be taken, including protecting children, and action in respect of the accused.
<b>Reporting</b>	Where required by legislative, contractual or other obligations, the institution must report the complaint to the police, a child protection authority, oversight agency and/or professional or registration authority.
<b>Investigation</b>	The institution will investigate the complaint.
<b>Communication</b>	The institution will communicate with and provide support for complainants, parents, staff and other children. It will also manage the media.
<b>Maintain records</b>	The institution will maintain records of the investigation process. Records should contain reasons for decisions and subsequent action taken.
<b>Complete a root cause analysis</b>	The institution will review the circumstances of the complaint and the outcome to identify systemic factors that might have contributed to the incident.
<b>Monitor and review</b>	A system of policies, procedures and practices should be in place to inform continuous improvement and strengthen protection of children at the institution.

The term ‘complaint handling’ in the context of child sexual abuse encompasses the development and implementation of policies, procedures, systems and processes for managing complaints of child sexual abuse.

## 1.3 Our work so far

### Child safe organisations

The Royal Commission is required to examine institutional responses to child sexual abuse and identify how children can be protected more effectively against such abuse. A key aspect of this task is to examine what contributes to making organisations ‘child safe’.

The Australian Children’s Commissioners and Guardians (ACCG) define a ‘child safe organisation’ as one that consciously and systematically:

- creates conditions that reduce the likelihood of harm occurring to children and young people
- creates conditions that increase the likelihood of any harm being discovered
- responds appropriately to any disclosures, allegations or suspicions of harm.<sup>7</sup>

In Australia, many different approaches are taken to making organisations safer for children at the national, state and territory, sectoral and industry levels. These include the 2005 *National framework for creating safe environments for children* and the 2013 ACCG *Principles for child safety in organisations*. These have provided guidance to institutions in improving their child safe standards.

The adoption and use of these standards seems to be partial and fragmented across states and territories. There is also limited research evidence on which to base best practice in this area.

We will be doing more work on this topic. We have initially identified nine elements that contribute to making organisations safe for children including:

- organisational leadership, governance and culture
- human resources management
- child safe policies and procedures
- education and training
- children’s participation and empowerment
- family and community involvement
- physical and online environment
- review and continuous improvement
- child focussed complaint process.

### 1.3.1 Our information and evidence

Our public hearings, private sessions and research have identified institutional failings when responding to complaints of child sexual abuse. Our work has also helped us appreciate the challenges for institutions. The following processes have been particularly informative.

#### Public hearings

Between September 2013 and December 2015 we held 34 public hearings. The majority of these focused on case studies of how institutions responded to allegations and proven instances of child sexual abuse. The abuse examined, and the reporting of the abuse, took place between 1940 and 2014. To date we have published reports on 20 of our public hearings.

In most of our case studies the institution’s response to allegations was ineffective or inadequate. As stated earlier, generally there were no complaint handling procedures, or if they existed they were inadequate or ignored. In a number of case studies the institution did not report allegations of criminal conduct to the police. Communication was generally poor and victims, families and staff affected were not informed of what the institution was

doing about the complaint. Record keeping was also poor. The culture exposed in some case studies revealed an institution more concerned with its reputation than with the safety of children.

The following case studies illustrate some of the problems we aim to address in best practice principles.

#### [Case study 2: YMCA NSW's response to the conduct of Jonathan Lord<sup>8</sup>](#)

This case study illustrated that there can be a considerable gap between policies and practice. YMCA NSW had child protection policies in place yet they were too complex and staff members were not sufficiently aware of them or trained in how to implement them properly.

Without a culture of vigilance and shared personal responsibility for the safety of children, the policies were not effective at protecting children. Jonathan Lord, an employee of YMCA NSW, was able to groom and sexually abuse a number of children under his care without his conduct being reported. Lord was suspended in September 2011 because of allegations reported to the police that he had sexually abused a child on an excursion that day. He was subsequently convicted of 13 offences involving 12 children who had been under his care during his employment at YMCA NSW during the period 2009-11.

We found that while YMCA Caringbah had a reporting system in place, it was ineffective. Some junior staff stated that they felt uncomfortable speaking to their managers or worried that nothing would be done about their concerns. When YMCA NSW did respond to allegations about Lord's abuse they failed to provide frank, practical and timely information to parents and did not ensure staff were kept informed and supported. At times YMCA NSW was motivated in part to protect its reputation rather than the integrity of the police investigation.

#### [Case study 5: Response of The Salvation Army to child sexual abuse at its boys' homes in New South Wales and Queensland<sup>9</sup>](#)

Between 1950 and the 1970s the conduct of staff in four Salvation Army residential boys' homes indicated a culture of punishment had developed, which resulted in fear of staff. This case study highlighted the difficulties for children to disclose abuse in this environment. Boys who complained were punished, disbelieved, accused of lying and/or no action was taken. Often a boy's complaint was directed by the institution to the manager who had perpetrated the abuse. On the occasions that senior staff at The Salvation Army were made aware of an allegation of child sexual abuse against a staff member, it was not investigated. As a result, boys were deterred from reporting abuse, and those outside of the homes were often unaware of the allegations. The situation was exacerbated by the lack of staff training and high staff turnover.

### Case study 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes<sup>10</sup>

In this case study, staff at a Catholic primary school failed to comply with mandatory reporting obligations and with the school's procedures. This allowed Gerard Byrnes, a teacher, to continue working with children after allegations of child sexual abuse had been made against him.

In September 2007, the parent of a year 4 girl telephoned the principal of her primary school reporting that his daughter complained that her teacher, Mr Byrnes, had put his hand inside her school shirt, touched her and made her feel uncomfortable. At the time, Byrnes was one of two student protection contacts who had been appointed by the principal.

The school had manuals and apparent training regimes in place. It had been accredited by a process that did not require any assessment of the adequacy of training programs or of the implementation of child protection policies and procedures.

When the principal of the school received the allegations, he did not notify the police and he did not conduct a risk assessment. During discussions with senior staff at the Catholic Education Office, the principal failed to report the most serious allegation, which would have made clear the sexual nature of the alleged conduct. As a result, Byrnes continued working at the school for 14 months after the first allegations were received.

In contrast, we found that the actions taken by Bishop William Morris in 2009 were appropriate. Bishop Morris was in charge of the Diocese of Toowoomba, Queensland. He responded appropriately to a telephone call from a parent of a child at the school informing him about the complaint made to the principal in 2007. Bishop Morris's actions included commissioning an independent investigation into what occurred and seeking advice and recommendations on any actions that needed to be taken to better protect children.

In 2010, Byrnes was sentenced to 10 years' imprisonment including a non-parole period of eight years, after he pleaded guilty to 44 child sexual abuse offences against 13 girls who were then aged between eight and 10.

### Case study 14 - The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese<sup>11</sup>

This case study showed the importance of recording details of the institution's action and the response of the person alleged to have committed child sexual abuse. In 1993, John Gerard Nestor was a Catholic priest in the Diocese of Wollongong when he was interviewed by Father Brian Lucas, a senior and legally trained priest, about his alleged conduct on church children's camps. No record was made of the questions put to Nestor or his responses. This meant there was no written record of any admission of criminal conduct for use in any subsequent investigation, prosecution or penal process.

Three years later, Nestor was convicted of aggravated indecent assault and an aggravated act of indecency on a person under the age of 16. Nestor appealed the decision and was acquitted but he continued to be the subject of complaints. Over the next 11 years the Church considered whether Nestor should be allowed to function publicly as a priest or whether he should be dismissed. Ultimately, Pope Benedict XVI dismissed him from the priesthood in October 2008.

## Private sessions

In our private sessions, we have heard from survivors who said they did not disclose to the institution because they didn't trust the complaint process, at times because the accused was a senior figure in the institution. People expressed the need for a complaint process that was accessible, independent, responsive and respectful.

Relevant complaint handling themes identified include:

- individuals being discouraged by the institution from pursuing complaints, minimising the complaint
- children not being believed
- staff who were the subject of a complaint being allowed to continue working with children
- institutions often being slow to respond, failing to commence investigations, having a poor understanding of children's capacity to be witnesses, and failing to keep victims and their families informed of their findings or actions
- children being punished or chastised as a result of their disclosure
- a small number of survivors have told of positive experiences of responses by institutions. These experiences included being believed, kept informed throughout the process, and having the complaint and response dealt with quickly.

## Submissions to issues papers

We received many submissions to three issues papers which have informed our work on complaint handling. They are *Issues Paper 3: Child safe institutions*; *Issues Paper 4: Preventing sexual abuse of children in out-of-home care*; and *Issues Paper 9: Addressing the risk of child sexual abuse in primary and secondary schools*.

## Research we have published

Two pieces of research we have published relating to complaint handling are:

***Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts***<sup>12</sup>

Key findings of this research included that:

- Detecting child sexual abuse is challenging and most people rarely – if ever – need to do this at work. Grooming behaviour is often ambiguous, making it difficult for colleagues to make sense of the behaviour and recognise it as child sexual abuse.
- Organisations with systems and processes that provide ways for staff to talk through their decision-making process, and encourage a culture of critical reflection, can help minimise errors of reasoning and cognitive bias.

***Taking us seriously:  
Children and young  
people talk about  
safety and  
institutional  
responses to their  
safety concerns***<sup>13</sup>

Children and young people who participated in the focus groups generally agreed that institutions were safe when they:

- focused on helping children and young people
- valued their participation
- provided a safe physical environment
- proactively protected children and young people from unsafe people and experiences
- employed safe and trusted adults.

## Work underway

Other related topics being addressed in our work include:

- mandatory reporting and other legal reporting obligations imposed on institutions
- best practice in record keeping
- the criminal justice system including investigation of allegations of child sexual abuse by the police and reporting allegations to the police
- prevention and treatment of child-to-child sexual abuse.

We refer to these issues in this paper in the context of institutions' complaint handling and responses to allegations of child sexual abuse.

In addition, in 2015 we released two reports:

- *Working with Children Checks Report*<sup>14</sup>
- *Redress and Civil Litigation Report*.<sup>15</sup>

The problems we addressed in these reports intersect with how institutions handle and respond to complaints of child sexual abuse.

## 2 Complaint handling processes and obligations

International<sup>16</sup> and Australian children’s advocacy and service organisations have identified principles and features of complaint processes that are suitable for use by organisations that provide services to children.<sup>17</sup> Generic complaint handling principles reflected in guidelines developed by agencies such as the Commonwealth and State Ombudsmen also contribute to the body of knowledge around best practice.

Robust complaint handling procedures in the area of child sexual abuse enable better protection of children. They also contribute to the prevention of child sexual abuse by strengthening the safeguards within an institution.

### 2.1 United Nations’ conventions

The *United Nations Convention on the Rights of the Child* (‘the Convention’) has proclaimed that children are entitled to special care and assistance. The Convention states ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’.<sup>18</sup>

The Convention recognises that all children have rights, and that children who do not live in a family environment are entitled to special protection and assistance provided by the state.<sup>19</sup> Following are relevant articles in the Convention applicable to all children.

<b>Article 3</b>	Provides that the best interests of the child must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.
<b>Article 12</b>	Provides that a child, who is capable of forming their own views, has the right to express those views freely in all matters affecting the child. The views of the child must be given due weight in accordance with the age and maturity of the child. This includes providing the opportunity for the child to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
<b>Article 19</b>	Provides the right to protection of the child from all forms of violence, exploitation, abuse and neglect including sexual abuse while in the care of any person. States must take all appropriate legislative, administrative, social and educational measures to protect children from all forms of abuse, including exploitation and sexual abuse. Such protective measures include effective procedures for reporting, referral, investigation, treatment and follow-up of instances of abuse and, as appropriate, for judicial involvement.
<b>Article 39</b>	Provides for states to take appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of abuse in an environment that fosters the health, self-respect and dignity of the child.

The *United Nations Convention on the Rights of Persons with Disabilities* aims to protect and promote the rights of persons with disabilities and facilitate their participation and independence.<sup>20</sup> The following articles are relevant to the rights of children with disability to personal and physical safety.

<b>Article 13</b>	A person with disabilities has a right to access justice on an equal basis as others, including to participate as a witness in proceedings.
<b>Article 17</b>	Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.
<b>Article 25</b>	Persons with disabilities have the right to enjoyment of the highest attainable standard of health.
<b>Article 26</b>	States must take appropriate measures to enable persons with disabilities to attain and maintain maximum independence and must promote the availability, knowledge and use of assistive devices for persons with disabilities.

## 2.2 General complaint handling and investigation guidance

There is a large body of material about complaint handling within organisations. General complaint handling principles can be tailored to different institutions, situations and types of complaints.<sup>21</sup> There are also guidelines on investigating complaints and other matters that provide useful advice on best practice.

The Australian Standard for complaint handling is based on the International Standard. A summary of the *Australian Standard: Customer satisfaction – Guidelines for complaints handling in organizations* is included in Appendix 2.

A summary of the *Australian Government Investigation Standards* is included in Appendix 3. These establish minimum standards for Australian Government agencies conducting investigations. The standards, which were originally designed for law enforcement agencies, were revised in 2011 to allow any Australian Government agency to apply them to their own operations.

### Ombudsman’s complaint handling guidelines

Commonwealth and State Ombudsmen have published guidelines, manuals and fact sheets outlining principles that underpin good complaint handling including investigation frameworks.<sup>22</sup> The principles reflect those of the Australian Standard. These are general complaint handling and investigation frameworks that do not have child sexual abuse as their principal focus. The majority are aimed at responding to complaints made by adults. Although the Ombudsman’s offices deal primarily with complaints against government agencies, their guidelines are useful for non-government institutions, including those providing services to children.

Our work tells us that children are particularly vulnerable and allegations of child sexual abuse generally involve a number of agencies. In addition to the generic components, risk assessment and management are important when responding to allegations of child sexual abuse.

It follows that best practice in responding to complaints of child sexual abuse involves adapting and extending existing guidelines.

The features below are recognised by the various Ombudsmen as essential to good complaint handling.

<b>Institutional culture</b>	Recognise a person’s right to lodge a complaint. Committing to effective resolution of complaints will benefit an organisation’s reputation and administration. <sup>23</sup>
<b>Transparency and access</b>	Complaint mechanisms should be well known to clients and staff. People are aware of the right to complain, how and where to do it, and how the complaint will be handled. The procedure should be easy to understand with clear lines of reporting. Vulnerable clients may need assistance to enable them to make a complaint. <sup>24</sup>
<b>Responsiveness and feedback</b>	Acknowledge and respond to complaints quickly. The complainant should be informed of the expected timelines and be kept informed throughout the complaint process.
<b>Objectivity and fairness</b>	Complaints should be dealt with objectively, fairly and impartially. Conflicts of interest and bias should be avoided and procedural fairness observed. Complainants should be protected from victimisation or harassment. <sup>25</sup>
<b>Staff training and delegation</b>	Complaint handling staff members require training in good complaint handling practices and an awareness of the need to manage complainant expectations. Complaints staff should be supported in their handling of complaints. <sup>26</sup> Employees responding to or investigating complaints of sexual assault should receive specialised training. <sup>27</sup>
<b>Accountability</b>	The complaint handling system should be open to scrutiny by clients, staff and review bodies. A complaints register should be maintained by the institution. <sup>28</sup> There should be transparent record keeping for the management and outcome of each complaint.
<b>Continuous improvement</b>	Complaints and patterns of complaints are analysed to see what systemic issues can be identified and how the system can be improved.
<b>Right of review</b>	There should be provision for internal and/or external review of the outcome of the complaint, with this being made known to the complainant.
<b>Fair remedy</b>	If the complaint is upheld, the organisation should take appropriate action. In the case of allegations of sexual assault, government agencies should have formal arrangements to ensure appropriate management. <sup>29</sup>

## 2.3 Legislative and regulatory obligations and responsibilities

There are laws regulating the process certain institutions must follow when responding to complaints. Government agencies work within a highly regulated environment for handling complaints generally, as well as those alleging child sexual abuse. Non-government agencies are generally subject to fewer legislative requirements, although their funding agreements may stipulate action they must take in response to a serious complaint.

The requirements depend upon the state or territory in which the institution operates, the nature of the institution and, in some cases, the circumstances of the complaint. The laws setting out these requirements change from time to time as do regulatory or other instruments that reflect those laws.

Institutions need to understand the legal requirements that apply to them and ensure their procedures and policies are consistent with them.

Some of the key requirements dictated by law include reporting to child protection agencies, the police and oversight bodies, complying with relevant privacy laws and affording procedural fairness to those adversely affected by proposed findings of investigations.

## 2.4 Reporting to other agencies

Once a complaint of suspected child sexual abuse is received, an institution may be required to, or may be able to, report the conduct to other agencies.

The reporting obligations that apply to disclosures of suspected child sexual abuse may, depending on the circumstances, include one or all of the following:

- Where, in broad terms there is a reasonable belief that a child is at risk of harm, the institution will be obliged to report the risk to child protection authorities.
- The institution will be obliged to report possible criminal conduct to the police.
- In New South Wales, institutions are obliged to notify allegations of reportable conduct to the NSW Ombudsman.
- The institution may have to notify a professional or registration authority of allegations of unprofessional conduct by one of their registrants.

### Mandatory reporting to child protection agencies

In short, designated people are required to report to child protection authorities children they believe may be at risk of harm. Mandatory reporting obligations vary across jurisdictions, and institutions and staff need to be familiar with the laws relevant to them.<sup>30</sup>

Teachers, doctors, nurses and the police are mandated reporters in every state and territory.<sup>31</sup> Outside these four designated reporter groups, additional mandatory reporters range from a small pool of professionals to every citizen. The threshold for making a mandatory report varies. In some cases, it is based on a reasonable belief that a child is at risk of harm, in others a significant risk of harm is required.

In some jurisdictions, a report to a child protection authority is automatically made known to the police and there is often a joint approach to the investigation.

We will be doing more work on this topic.

## Reporting to the police

In New South Wales and Victoria, the law requires individuals to report and disclose information about certain crimes to law enforcement authorities.

Under the *Crimes Act 1900* (NSW), a person is required to report to the police or another appropriate authority if they know or believe a serious indictable offence has been committed.<sup>32</sup> A serious indictable offence is defined as an offence that is punishable by six years' imprisonment or more<sup>33</sup>, which would capture some but not all current child sexual abuse offences.<sup>34</sup>

In 2014, the *Crimes Act 1958* (Vic) was amended to make it a criminal offence for any adult to fail to report a suspected sexual offence by an adult against a child aged under 16.<sup>35</sup>

We have a large project underway on all aspects of the criminal justice system, including making reports to the police. These matters will be canvassed in public fora and public hearings.

## Voluntary reporting

Victoria, New South Wales and the Australian Capital Territory also provide for voluntary reporting by all persons.<sup>36</sup> Voluntary reporters are protected from civil liability.<sup>37</sup> Whistleblower legislation may also protect persons reporting suspected sexual abuse.<sup>38</sup>

## Reporting to oversight bodies

In New South Wales, as part of the reportable conduct scheme the head of a designated agency (such as a school, a residential care agency or certain public sector agencies) is required to notify the Ombudsman of certain allegations, including allegations of child sexual abuse. The requirements of the scheme are outlined in Part 3A of the *Ombudsman Act 1974* (NSW).

Designated agencies are required to advise the action the agency proposes to take.<sup>39</sup> On completion of its investigation, the agency reports its findings and the outcome to the Ombudsman. The Ombudsman may monitor the agency's investigation or conduct its own investigation.<sup>40</sup> At any stage during the process, the Ombudsman may provide advice or recommendations to the agency.<sup>41</sup>

We are considering whether it would be beneficial for schemes similar to the New South Wales reportable conduct scheme to be established in all Australian states and territories. See Section 5 of this paper for submissions we are seeking on this topic.

## 2.5 Other obligations

In addition to reporting obligations, institutions responding to allegations of child sexual abuse need to take into account any contractual arrangements that dictate how such complaints are to be handled. For example, funding agreements between governments and

service providers may require the service provider to adopt certain complaint handling measures or to make available to clients their complaint handling procedures. This commonly occurs with the funding of out-of-home care (OOHC) services and disability services.

Sometimes legislation imposes conditions upon an institution receiving funding. In New South Wales, for example, it is a condition of the provision of financial assistance to a disability service provider that it must comply with the disability service standards.<sup>42</sup> The disability service standards provide that, when a person wants to make a complaint, the service provider will make sure the person's views are respected, that they are informed as the complaint is dealt with, and have the opportunity to be involved in the resolution process.<sup>43</sup> Failure to comply with a funding agreement or funding conditions could lead to suspension or termination of the financial assistance.<sup>44</sup>

Industrial agreements (such as enterprise agreements) may also require particular procedures to be followed when a complaint is made about a staff member of an employer institution. An institution that is party to an enterprise agreement under the *Fair Work Act 2009* (Cth) is prohibited from contravening a term of that agreement.<sup>45</sup> If it were to do so (for example, by not following complaints procedures which were the subject of the agreement) an employee or union could apply for a civil remedy.<sup>46</sup>

In Queensland, the holder of a licence to provide childcare services is required to keep records of any written complaint the licensee receives relating to the provision of the services to the child, and any action the licensee takes about the complaint.<sup>47</sup> Non-government schools are often required to have a complaints handling policy as a condition of registration and this may be achieved through a legislative requirement to comply with administrative standards.<sup>48</sup>

In addition, under the national regulatory scheme for 'education and care services' (including child care services and out-of-hours care), institutions are required to have complaint handling policies and to make them accessible. The approved provider of an education and care service must ensure the service has policies and procedures for dealing with complaints. The service must also display the contact details of the person to whom complaints may be made.<sup>49</sup> There is no prescription about the details of the policies and procedures adopted.

Finally, legislation and policies govern the way in which many government institutions are required to handle complaints about employees. This may include complaints about government school teachers<sup>50</sup>, staff in detention centres<sup>51</sup> and public sector employees generally.<sup>52</sup>

## Exchange of information

Institutions should consider whether, and if so in what circumstances, institutions can or should warn each other of suspicions about employees or former employees. This issue may arise where an adult accused of child sexual abuse chooses to leave the institution rather than cooperating in an investigation. In these cases, the accused may get a job working with children in another institution, or as a contract or agency staff member working for a number of institutions.

While the exchange of information between employer institutions may help to ensure the safety of children, institutions may believe they are constrained by the law of defamation and, in some cases, by privacy laws.<sup>53</sup>

Jurisdictions have legislation that authorises the exchange of information between certain agencies and individuals. These generally overcome legal constraints affecting the provision of information and provide that no liability arises by reason of the disclosure.

The schemes for information exchange in New South Wales and the Northern Territory are particularly comprehensive. Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and Part 5.1A of the *Care and Protection of Children Act 2007* (NT) permit or require information exchange between certain institutions and individuals for purposes including identifying and responding to incidents and risks of child sexual abuse.<sup>54</sup>

Both regimes explicitly prioritise the safety, welfare and wellbeing of children over privacy and confidentiality.<sup>55</sup> A person providing information in good faith in accordance with the legislative scheme is not civilly or criminally liable, or in breach of any professional code of conduct, for doing so.<sup>56</sup> Information may only be exchanged if the conditions in the legislation are satisfied. For example, if the provider of the information reasonably believes that the information would assist the recipient to make a decision, assessment or plan relating to the safety or wellbeing of children.<sup>57</sup>

Our consultation paper on *Institutional responses to child sexual abuse in out-of-home care* discusses our considerations about information sharing in more detail.

## 3. Best practice principles

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

From our work we are clear that institutions need help and guidance to respond quickly and comprehensively, to manage complaints in a way that better protects children from child sexual abuse. Through our case studies, private sessions and review of research we have identified six principles that appear to make for strong and effective practice in responding to complaints of child sexual abuse.

1. **An institutional culture that makes decisions based on the best interests of the child and is aware of the inherent vulnerability of children in their care.** The culture establishes and leads appropriate standards of behaviour. It creates an environment in which children and adults connected to the institution are alert in identifying and enabled to report incidents or behaviour that could indicate, or be a precursor to, child sexual abuse.
2. **A child-focused complaint handling policy.** This policy guides the institution's response to complaints and specifies protections for people who make complaints. The policy needs to be accessible to all children and any adult survivors – taking into account cultural diversity as well as communication and support needs. It also needs to be enforced and regularly reviewed.
3. **A process that is clear and accessible to children and adults, and emphasises responsiveness and accountability.** Information should be available about how and where to make a complaint. The process should be simple. Support should be provided for any child or adult making a complaint. The response should be prompt. Those accountable for the process and outcome should be identified.
4. **Protocols are in place for managing relationships and sharing information with other agencies.** The institution should maintain contact with agencies such as the police and child protection to ensure that the institution reports and discusses complaints in a manner that protects the safety and wellbeing of children.
5. **Training is provided about the complaint handling process.** All staff members, volunteers and others involved in the complaint handling process receive adequate and ongoing training in the institution's expectations about reporting concerns and its policy and procedures for managing complaints.
6. **An ongoing audit process is in place.** This helps institutions monitor the efficacy of their policy and procedures for responding to complaints of child sexual abuse.

All six principles should be taken into account.

Given the diversity of institutions covered by our Terms of Reference, any attempt to define best practice in complaint handling should allow for tailoring to fit particular contexts and circumstances. Nonetheless, these principles offer a guide to all institutions in responding to complaints of child sexual abuse.

## 3.2 Suggested topics of a complaint handling policy

The legislative, contractual or other context in which complaints are to be handled and investigations are to be conducted should be clearly set out and updated as necessary in a complaint handling policy.

A code of conduct or similar guideline should be in place so that staff and volunteers understand their obligations and responsibilities and institutions can determine whether the conduct meets the accepted standard.

The complaint handling policy should provide guidance on the following matters in a way that is simple, accessible and clear. It should set out who is responsible and where relevant the expected time frame in which the task will be completed. Topics include:

- who can make a complaint – including a child, parent, trusted adult, independent support person, staff member, volunteer or adult survivor
- how to make a complaint – to whom and by what means a complaint can be made within the institution. There should be a number of pathways to complain, including to an independent body such as an Ombudsman in the event the institution fails to respond.<sup>58</sup> Methods to make a complaint should reflect available technology and any special needs of complainants
- how to respond to children with diverse experiences and needs – specify any additional safeguards that may be required to meet the needs of children with disability, children from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander children, or children who live in OOHC
- who within the institution will be told of the complaint – it should be brought to the attention of a senior person, and if that person is the subject of the complaint, a more senior person if available. Otherwise, it should be brought to the Board or a person from the governing body
- who will be responsible for handling the complaint (if different from who will be told of the complaint)
- how to do a risk assessment of the complaint, including:
  - assessing the safety of the complainant and other children
  - considering what action should be taken about the accused including supervision, removal of contact with children, being stood down, termination
  - considering whether it is necessary to report to another agency and if so, report to that agency, including the police and child protection authorities
  - considering who, if anyone, should be informed
  - considering whether there are any restrictions to informing others
- how to implement the decisions made as a result of the risk assessment
- support to be provided to those affected including the child or children involved and the person who made the complaint

- what to do when reporting to the police – an institution should obtain advice from the police as to whether it can or should conduct its own investigation given the actions proposed by the police or other agencies
- how to investigate the complaint, including that the person investigating:
  - is impartial and objective
  - has no conflict of interest with the proper investigation of the complaint
  - has training, skills and experience in investigating child sexual abuse
  - may be an employee of the institution, a contractor to it or independent of it.
- steps to follow to meet the requirements of procedural fairness
- who will oversee the investigation – this should be done by a person within the institution who has sufficient seniority and authority to discharge the role effectively, and who can demonstrate they are impartial and objective
- how to communicate with stakeholders including the complainant, the media and other authorities during the complaint process
- the need to document the complaint, the information obtained, action taken and findings
- how to determine the outcome
- how to put into effect any decisions – including informing the complainant and other interested people, institutions or other agencies
- appeal processes
- how to conduct a systemic review or root cause analysis, if necessary, and consider the need to recommend changes from that process
- who will maintain a complaint register
- outlining the continuous improvement system that is in place – including analysis of complaints to identify and address systemic issues.

## 4. Implementing the principles

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### 4.1 Creating a culture that encourages reports

At the heart of good complaint handling is a strong child safe culture that makes it clear child sexual abuse will not be tolerated.

Part of creating such a culture is putting in place a complaint handling policy that addresses the suggested topics set out in Section 3.2.

Actions that institutions can take to encourage and support a culture of this kind include:

- adopting and disseminating a code of conduct that sets out the behaviour required of all people within the institution. The code should clearly articulate the rules of behaviour so that both adults and children understand and are confident about when they should report breaches of the code of conduct. Any sanctions for breaching the code should be specified
- embedding the code of conduct into the institutional culture by having each employee or volunteer read and sign to confirm their commitment to the code. Staff should also receive education and training on the code of conduct
- creating an environment that actively supports and encourages both children and adults to report concerns.<sup>59</sup> This includes:
  - encouraging children to report behaviours that make them feel uncomfortable
  - making sure adult survivors can readily access the complaint handling policy
  - making help to communicate available for children and adult survivors, including interpreters or assisted communication tools as required
  - making support available for the person who makes the complaint, including psychological support and counselling where necessary
  - structuring activities to create opportunities for children to talk with a trusted adult about subjects that might otherwise be difficult for them to raise<sup>60</sup>
  - taking seriously an allegation of sexual abuse any child or adult survivor makes and treating them with dignity and respect
  - involving children in the development of the complaint handling process and its ongoing review so they have a sense of ownership of it<sup>61</sup>
- ensuring responses are culturally, cognitively and developmentally appropriate
- establishing effective links between complaint handling and the institution's quality improvement processes, so that complaints contribute to better child protection within the institution
- providing frequent staff supervision so staff members have an opportunity to discuss any concerns they have about the conduct of anyone in the institution and to understand the reporting process.<sup>62</sup>

### 4.2 Institutional structure and senior management

Accountability for managing complaints should be shared across all executive levels of the institution. This means that chief executive officers, complaint managers, any relevant

boards and councils have responsibility and oversight of responses to complaints of child sexual abuse so that they best protect children.

### 4.3 Listening to children when they disclose

The complaint handling policy should set out how to interact with a child who discloses behaviour that might constitute sexual abuse.<sup>63</sup> This may include:

- supporting the child and reassuring them that telling someone was the right thing to do
- emphasising to the child that what occurred was not their fault
- considering whether expert assistance is needed to support a child to communicate their concern or disclosure (for example, disability expert, language or cultural interpreter)
- limiting questioning and asking only open questions. (This response will depend on who receives the disclosure. If a junior staff member has heard the disclosure they may need to immediately report it to senior management)
- undertaking to do something in response to what the child has said and, where appropriate, explaining what will be done and the expected time frame
- not making promises that cannot be kept, including that the information will remain confidential; tell the child who will be told and why
- documenting the conversation using the child's exact words as far as possible<sup>64</sup>
- ceasing questioning the child and witnesses if the conduct described is likely to constitute criminal conduct.

These responses may vary depending on whether the person the child has disclosed to is, for example, a front line staff member, a senior manager or a specialist complaints manager.

Children may encounter multiple barriers<sup>65</sup> when seeking to make a complaint including:

- the power imbalance between the child and the institution or individual to whom the complaint might be made
- fear of being viewed as a trouble maker or that they will not be believed<sup>66</sup>
- fear on behalf of the child of hurting family members who will be upset
- fear of how other children and adults will view them once their secret is known
- lack of trust in authority figures and complaint systems
- feeling shame or embarrassment about the incident
- feeling guilty or blaming themselves
- lack of knowledge about child sexual abuse
- lack of knowledge about the law and their rights
- an organisational culture that is not open to receiving complaints
- having no one to disclose to
- fear of retribution against themselves or their family or against the victim's family<sup>67</sup>
- fear of getting the accused into trouble and the possible consequences
- fear of hurting the perpetrator, who may have manipulated the child to feel responsible for their feelings
- lack of support to communicate effectively (for example, for children with disability)
- additional cultural taboos and concerns some children may face

- previous negative experience, which may lead some children, such as those from refugee backgrounds or Aboriginal and Torres Strait Islander children, to have greater mistrust of authorities.<sup>68</sup>

These barriers may be just as relevant to adult survivors of child sexual abuse.

As indicated earlier, we are looking at police practices in interviewing children and specialist multidisciplinary responses involving interviewing by the police in a separate piece of work. This work will inform our final recommendations on best practice in interviewing children.

#### 4.4 The kinds of behaviour that should be reported

An institution's code of conduct should include definitions of various forms of abuse including sexual abuse and grooming. The code should be explicit about the kinds of behaviours that are not acceptable. Avoid using general terms such as 'appropriate' and 'inappropriate' to describe behaviour.

The code may form part of an institution's complaint handling policy.

The code should be clear that allegations of child sexual abuse are to be reported and to whom in the institution. It should also be clear that all breaches of the code of conduct are to be reported.

Behaviours for reporting will range from those that may be a breach of the code to those that may amount to a criminal offence.

Concerning behaviours that may be specified in an institution's code of conduct include, but are not limited to:

- showing favours to one child over others (for example, providing special tutoring to a child or giving a child a lift home)
- baby sitting
- taking photos of a child who is in the care of the institution outside of official duties
- creating situations to be alone unsupervised with a child (for example, tutoring, rehearsals, excursions)
- repeatedly visiting a child and/or their family at their home for no professional reason
- providing gifts or favours to a child or their family
- wearing inappropriate clothing around children (for example, clothing with sexually explicit images or messages or clothes that expose or accentuate the genitals or breasts).

More explicit conduct that may be specified in a code of conduct include, but are not limited to:

- using sexual language or gestures
- making written or verbal sexual advances
- sharing sexual photos or videos or other photos of the child
- sharing details of one's own sexual experiences with a child
- taking a child to one's house to be alone with the child

- arranging to meet a child alone away from the institution when there is no professional reason for doing so
- sharing phone numbers with a child except as allowed by the institution's formal communication policy for professional purposes and documentation
- engaging with a child via social media except as provided by the institution's formal communication policy
- asking children to keep a relationship secret
- showering or dressing or undressing with the door open (for example, on excursions and in residential situations)
- not respecting the privacy of children when they are using the bathroom or changing (for example, on excursions and in residential situations).

Note that many of the above may constitute grooming behaviours (see definition at Section 1.2).

Examples of conduct, which if proven, would be criminal should also be specified in the code of conduct and include, but are not limited to:

- obscene exposure (for example, an adult masturbating in front of a child or exposing their genitals)
- having, attempting to have or facilitating any kind of sexual contact with a child
- possessing, creating or exposing children to pornography
- giving goods, money, attention or affection in exchange for sexual activities or images
- voyeurism
- sexting
- grooming offences (as defined by law in most jurisdictions).

## 4.5 What to do if the police are investigating

As indicated earlier, we have a large project underway on all aspects of the criminal justice system including making reports to the police. These matters will be canvassed in public fora and public hearings.

For the purpose of this consultation paper, it is sufficient to say that generally institutions should report to the police when they believe the conduct constitutes a criminal offence.

If the police have been informed of an allegation – whether through a mandatory report or on a voluntary basis – the institution should not take any steps to investigate the allegation without the agreement of the police. If the police are investigating an allegation, or are considering whether or not to investigate an allegation, any investigatory steps taken by the institution might interfere with the police investigation or undermine possible criminal proceedings. If the institution considers urgent action is required to ensure the safety of children, it should consult the police or child protection agency about the action. If the institution wishes to communicate with children, parents or staff about the matter, it should do so only in consultation with the police or child protection agency.

## 4.6 What to do if the police do not investigate or it does not result in a conviction

If the police decide not to investigate the allegation, then the institution should confirm that the police have no objection to the institution initiating its own investigation before taking any steps to investigate.

Even if the police do conduct an investigation, there can be many reasons why criminal proceedings might not be commenced, including:

- insufficient evidence of an offence having been committed
- the complaint is withdrawn as the complainant (or complainant's family in the case of younger children) is unwilling to proceed
- the alleged offender is not criminally responsible.

If an alleged offender is charged, the charges may be withdrawn or the accused may be acquitted.

If a police investigation and prosecution does not result in a conviction, the institution should seek the police's advice as to whether there are any implications for the institution's investigation of the allegation. The absence of a criminal conviction does not necessarily mean there is no need for the institution to investigate. The police may agree to give the institution copies of statements or evidence.

The institution should understand the reason for any outcome and, depending upon it, consider what steps it should take to protect children within its responsibility.

For example, if the police did not proceed because the family was unwilling to have their child participate in the criminal prosecution, the institution may still need to act.

In addition, if the accused was convicted, and then successfully appealed on the basis that the conviction was unsafe, the institution again should not rely upon the outcome to take no further action.

The protection of the child concerned and/or other children within its responsibility should be the institution's objective. A risk assessment should be undertaken to ensure the safety of those in its care. This should occur whether or not the accused is still in employment. This could be considered an opportunity to improve risk management practices.

## 4.7 Types of complaints

### Child-to-child sexual abuse

We are doing more work on the prevention and treatment of child-to-child sexual abuse in a separate project. For the purposes of a complaint handling policy, it is sufficient at this stage to indicate that there will be special considerations if this form of abuse is alleged. We will provide more guidance on this issue.

## Anonymous complaints

The complaint handling policy should specify that anonymous complaints can be made. An assessment should be made as to whether there is sufficient information to investigate the complaint. If so, the complaint handling policy should be followed.

## Historical complaints

Many survivors have told us about incidents of sexual abuse that took place many years ago. The survivors are now adults and have come forward, often for the first time, to report abuse experienced as a child.

Historical complaints fall broadly into two categories. First, complaints dating back decades, where those accused have long since left the institution. They may have died, be elderly or frail. They may have no ongoing contact with children, and the circumstances in which the alleged abuse occurred are no longer current.

Procedures for dealing with historical complaints of this kind can focus on what can be done to assist the complainant. In such cases, complaint handling merges with issues of redress, which have been addressed in our report released in September 2015.<sup>69</sup> The priority issues include:

- acknowledging the abuse suffered
- issuing an apology
- providing assurance that the current policies will keep children in the institution safe and the abuse will not be repeated
- supporting the complainant, such as paying for counselling costs or providing other financial assistance.

If the accused is still alive, the institution will need to consider whether it needs to comply with legal reporting obligations.

The second category of historical complaints comprises those made by victims who are also now adults, but where the concerns raised are current because the accused is still working with children. These complaints raise much the same issues in terms of the complaint handling process as do contemporary complaints of child sexual abuse and will likely involve reporting to the police. As part of the response, institutions should undertake a risk assessment and root cause analysis or other systemic review. This can determine whether any risk factors that may have led to the incident still exist, and if so, what institutional improvements can be made.

The institution's response will vary depending on whether the accused is currently working within the institution or is working with children elsewhere. When they are working elsewhere, information exchange protocols and legislation may need to be considered (see Section 2.4 on reporting to other agencies and Section 2.5 on exchange of information).

In all historical complaints the alleged victim is now an adult who may have their own views about what the institution should do with the information.

In line with recommendation 73 in our *Final Report Redress and Civil Litigation*, it is our view that an institution should report any allegations to the police if it has reason to believe that

there may be a current risk to children. An institution's complaint handling policy should articulate the reporting procedures.

## Unsubstantiated and false complaints

A significant proportion of child sexual abuse complaints will not be substantiated. Some may be withdrawn, may lack evidence or may remain unproven.

In addition, a small number of allegations may be false and made in bad faith or motivated by mischief or malice. There is limited reliable research regarding the frequency of false allegations of child sexual abuse. One reason for the difficulty obtaining reliable data is the inability to measure what cannot be defined. To classify an allegation false, it is first necessary to prove that the incident did not occur.<sup>70</sup>

Of the available research, false allegations of sexual abuse of children are rare and range between 1.5 per cent<sup>71</sup> and 8.5 per cent<sup>72</sup> of child sexual abuse investigations or complaints.<sup>73</sup> In a study of 551 child protection investigations over a 12-month period in the United States, only 1.5 per cent of concluded cases of alleged sexual abuse were deemed to emanate from false allegations of sexual abuse from parents and/or children.<sup>74</sup> Another United States study of 225 cases of reported child sexual abuse in schools stated that school superintendents found 7.5 per cent of the accusations to be false.<sup>75</sup>

Research<sup>76</sup> shows it is considerably more likely that a child who has experienced sexual abuse will remain silent, or even deny being the victim of sexual abuse, than make a false allegation of sexual abuse.

Based on this research, on the rare occasion an allegation may be found to be intentionally false. The allegation may be made by the child or by their parent or guardian. If it is found that a child has made an intentionally false complaint, try to find out why and work through the issues with the child. Consideration should be given to working with parents, carers and counsellors to help address the underlying cause(s) of the complaint. In any case, all complaints of child sexual abuse should be responded to through the institution's complaint process.

## 4.8 Provision of support

### Advocacy and support for victims and survivors

Complaints should be responded to sensitively in a way that supports and protects the interests of the child victim or adult survivor and does not compound the harm. This is sometimes described as part of a 'trauma-informed' response.

Assistance and support to be provided to the victim or survivor throughout the complaint handling and investigation process should include:

- reassuring the victim or survivor they did the right thing in reporting the matter
- making sure the victim or survivor is safe

- explaining the likely process, people involved, the anticipated time frame and what will be required of the victim or survivor
- offering referral to any necessary medical treatment and psychological support and counselling<sup>77</sup>
- offering a trusted adult, independent support person and/or advocate to assist them
- explaining the options that may arise from a complaint; for example, breach of code of conduct and/or criminal charges
- avoiding making the victim or survivor repeat their account of what happened
- changing the victim's placement if an allegation is made against an OOHHC carer
- communicating throughout on the investigation's progress and any resulting court proceedings or results of any other investigation (noting that if the police are also investigating the matter, this communication should only be carried out in consultation with the police).

### Support for other parties

Support, including psychological support and counselling where necessary, should be offered to other affected parties, including:

- the person who makes the complaint (if different from the alleged victim)
- family members and carers of the victim/s
- other staff members and volunteers affected by the disclosure
- if applicable, other children who may have been placed at risk, and their family members and carers
- other children at the institution who may be affected by changes implemented to manage risk
- removal of other children in the care of the accused
- children who may have previously been in the care of the accused.

At the conclusion of the complaint process, and at any other milestones, consideration should be given to appropriate debriefing sessions for staff, parents, the child or other children involved, and any other affected parties. Be aware there may be other children in the institution affected who have not reported the abuse.

### Support for the accused

The types of support and assistance to be offered to the accused may include:

- explaining the process for managing the complaint, including anticipated time frames and what will be required of them in the process
- clarifying expectations of the accused during the investigation; for example, not to contact other children/ staff members via social media, phone calls, letters or in person
- ongoing communication about the progress of the complaint process
- providing additional supports if the allegation is made against a child, including possible referral for therapeutic treatment and advising of support available for their affected family members
- making it clear that they are entitled to seek legal advice

- clarifying financial arrangements if they are an employee who is stood down pending the outcome of the investigation
- providing information about rights of appeal
- providing information about any other supports available including support when a person who was suspended is cleared to return to work. This may include counselling, a phased return to work or providing a mentor.<sup>78</sup>

## 4.9 Communicating with other children, parents, guardians and others

The complaint handling policy should include a protocol for determining whether, and if so in what circumstances, information relating to the complaint will be disclosed to third parties. The primary consideration should be the safety of children in the care of the institution. The institution may be bound by legislative, regulatory, contractual or other obligations relating to disclosure. For example, privacy principles may prohibit the disclosure of an individual's personal information.

As discussed earlier, if the police are investigating or deciding whether to investigate an allegation, any communication the institution undertakes might interfere with the police investigation or undermine possible criminal proceedings. If the institution considers urgent action is required to protect the children in its care, it should consult the police or child protection agency about the action. If the institution wishes to communicate with children, parents or staff about the matter, it should do so only in consultation with the police or child protection agency.

In deciding what disclosure is appropriate, the institution should consider what information needs to be revealed to protect the child or children.

## 4.10 The investigation

Reported conduct that does not reach the criminal threshold but may be inappropriate and/or a breach of the institution's code of conduct, should be investigated by or on behalf of the institution. If there is any doubt about whether the criminal threshold has been reached, the allegation should be reported to the police.

As stated, any other investigation the institution conducts should only occur with the police's agreement and if necessary, child protection authorities.

At the outset of the investigation, the objectives should be determined. If the institution has a code of conduct, the investigation may aim to establish whether the person breached that code of conduct. It should be considered whether it is to be part of a disciplinary process. There may be other obligations on the institution if the investigation is to be part of a disciplinary process.

The investigation should be carried out by an impartial, objective and trained investigator. That person should have no conflict of interest with the proper investigation of the complaint. The investigator may be an employee of the institution, a contractor or may be independent of the institution.

The investigation process should be documented and reasons given for any findings or conclusions.

The investigator will be guided by the institution's complaint handling policy which will outline how the findings are to be made. For example, the investigator may make recommendations and senior management determine the outcome.

A senior person within the institution should be appointed to oversee the investigation, particularly where it is being conducted by a contractor or person external to the institution. That person should be trained and skilled in monitoring an investigation.

#### 4.11 Procedural fairness

Procedural fairness requires institutions and other decision-makers to give a person whose interests are likely to be affected an opportunity to respond to relevant matters adverse to their interests. This applies if the decision-maker proposes to take those matters into account.<sup>79</sup> An institution's complaint handling policy should specify steps that will be taken to comply with the requirements of procedural fairness.

#### 4.12 After the investigation has been completed

The complaint handling policy should contain procedures for:

- advising the complainant of the outcome
- advising the person who was the subject of the complaint of the outcome
- providing ongoing support and a safety plan for the complainant and family
- advising any agency the institution is required to inform; for example, the Ombudsman or Children's Guardian
- advising those in the community affected by the conduct
- conducting a final risk assessment and implementing the findings of the assessment
- conducting a root cause analysis to identify systemic issues that may have contributed to the incident. For example, analysing an incident of a staff member visiting a child outside work hours may reveal that the institution has not educated new staff on the code of conduct and expected behaviour.

#### 4.13 Documentation and access to records

The institution should ensure that it is aware of its legal, contractual, professional or other obligations relating to documenting complaint handling, maintaining records and providing access to those records.

The complaint handling policy should ensure that:

- all steps taken in the complaint handling process are documented including:
  - receipt of the complaint
  - contact with the complainant
  - contact with witnesses
  - contact with the accused
- evidence obtained during the investigation, including witness statements, are kept

- the outcome is recorded and the reasons for the outcome given
- the identity of the author of the record, the reason for their involvement and the date the record was made are documented.

The policy should specify that documents are to be kept secure. It should set out who is permitted to access these documents, by what means they can be accessed and who has responsibility for them.

We will be doing more work on the topic of best practice in record keeping (including archiving practices) and will provide guidance on this issue in due course.

#### 4.14 Managing the media

The importance of managing the media about responding to complaints of child sexual abuse has been identified in research<sup>80</sup>, case studies<sup>81</sup> and other inquiries.<sup>82</sup>

The complaint handling policy should include a protocol for communicating with the media that specifies:

- who in the institution will receive and respond to media enquiries
- what information will and will not be provided, taking into account privacy and defamation laws and the need to protect children, the reputation of individuals and the reputation of the institution
- the need to consult the police and/or child protection authorities about the timing and content of any media communications.

#### 4.15 Induction and training for staff and volunteers

The policy should set out the training to be provided to staff about the complaint handling policy including the code of conduct.

For smaller institutions that may not have the resources to run training programs, child protection training is available from agencies such as the Ombudsman.

##### Specialist training for staff

Staff with specific responsibility for complaint handling should receive additional training appropriate for this role. Depending on the specific role, training may address:

- investigation skills including interviewing skills
- working with the police and child protection agencies.

The Australian Government Investigation Standards (summarised at Appendix 3) set out qualifications for investigators engaging in work for Australian Government agencies. Institutions may have regard to those standards in determining the standards they adopt.

##### Specialist training for leadership roles

Staff in leadership roles including executive, board and council members should have training in:

- child safe organisations
- legislative and policy framework for responding to allegations of child sexual abuse
- managing relationships with the police, child protection authorities and other agencies
- providing support for children, staff members and parents
- monitoring, reviewing and continuous improvement.

## 5. Matters on which submissions are sought

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### Best practice principles

The Royal Commission seeks submissions on the issues raised in this consultation paper. In particular, views are sought on the suggested best practice principles, the matters that should be canvassed in the complaint handling policy and how those matters might be addressed.

### Oversight of complaints handling – reportable conduct schemes

Oversight of responses to complaints of child sexual abuse in institutional contexts is inconsistent across Australia.

New South Wales is currently the only jurisdiction that has oversight of complaints of child sexual abuse in institutional contexts conducted by a body independent of the lead department and all service providers. As discussed in Section 2.4, the New South Wales reportable conduct scheme gives the Ombudsman powers under Part 3A of the *Ombudsman Act 1974 (NSW)* to work with agencies to build their capacity to respond to complaints of child sexual abuse. Reportable conduct includes any sexual offence or sexual misconduct committed against, with or in the presence of a child, whether or not it was committed with the consent of the child.

Under the scheme, the NSW Ombudsman is required to ‘keep under scrutiny’ the systems for preventing reportable conduct by employees of designated government and non-government agencies and other public authorities. It must also keep under scrutiny the systems for handling and responding to reportable allegations and reportable convictions involving those employees.

Designated agencies’ employees must notify their agency heads of any reportable allegations or convictions they become aware of, and the agency head must then notify the NSW Ombudsman of the allegation or conviction within 30 days. The agency head must also advise the NSW Ombudsman whether the agency intends to take disciplinary or other action against the relevant employee and give a reason for this decision.<sup>83</sup> The NSW Ombudsman may disclose to the NSW Children’s Guardian any information about an employee of a designated agency that the Ombudsman<sup>84</sup> believes may cause the employee to become a disqualified person for the purposes of a Working with Children Check, together with information about investigations into the relevant reportable conduct.<sup>85</sup> This may result in a person’s Working with Children Check clearance being cancelled.

The NSW Ombudsman may monitor the progress of any reportable conduct investigation by a designated agency, and request relevant information from the agency head concerned.<sup>86</sup> Heads of agencies must provide a copy of the investigation report to the NSW Ombudsman and advise of the resulting or proposed action in response.<sup>87</sup> Alternatively, the NSW Ombudsman may investigate directly, or investigate any inappropriate handling of or response to a reportable allegation or conviction by the relevant agency, then make recommendations for actions to be taken.<sup>88</sup>

Under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), the NSW Ombudsman can share the information it receives about persons subject to reportable conduct investigations with designated agencies and other public bodies (including the NSW Children’s Guardian, the police and others). It can also advise designated agencies undertaking investigations into their employees to seek further information from other agencies, if the second agency may be able to assist with an investigation.

Victoria is commencing consultations on the design of a reportable conduct scheme to be administered by the Victorian Commission for Children and Young People. It is proposed that legislation underpinning the scheme will have similar powers to those of the NSW Ombudsman.<sup>89</sup> This will include enabling the Commission to monitor investigations into abuse of children. In addition, the Australian Capital Territory Government announced in February 2016 it intended to introduce a similar scheme. We have also heard that the reportable conduct scheme has the support of the Ombudsman in several other jurisdictions.<sup>90</sup>

We have heard views that together, the reportable conduct scheme, the Working with Children Check and information sharing provisions provide oversight mechanisms that promote the protection of children.

While we are doing more detailed work on this topic, we would like to take the opportunity to seek submissions about the value of independent oversight mechanisms such as reportable conduct schemes. We welcome submissions about whether similar schemes should be established in all Australian states and territories. We also seek submissions about what features an independent oversight scheme should include, and whose conduct should be subject to its oversight.

### Advice and support for institutions

We also welcome submissions on how to improve institutions’ access to advice and support when responding to complaints of child sexual abuse, especially for smaller institutions.

Some larger institutions have specialist internal units dedicated to managing complaints of abuse. These units have extensive experience in handling and investigating complaints. They are available to provide advice and support to anyone in the institution who receives a report of child sexual abuse and play an active role in managing and overseeing the response. In some cases these units are centralised, and provide guidance and services to individual facilities.

Many smaller institutions have no access to such a resource. Even if the institution has a good complaint handling policy, they may have limited capacity to conduct their own investigations and little experience in responding to allegations of child sexual abuse.

Providing smaller institutions with access to advice and support about responding to a complaint of child sexual abuse could improve the quality of their response.

Options for consideration include a possible increased role for:

- peak bodies – if so, which peak bodies would be well placed to provide advice and support to their members?

- government agencies that may be able to provide resources for smaller institutions, such as preparing policy templates
- private service providers that may provide a fee for their services
- oversight bodies – if so, which oversight bodies would be best placed to advise and support institutions?
- a combination of the above as required depending on the capacity of the institution responding to the complaint.

Any other issue or topic which is not addressed in this paper on which institutions seek guidance should be raised in submissions.

We invite all interested parties to make written submissions in response to this consultation paper. Written submissions should be made by **Tuesday, 26 April 2016**:

- by email to [response@childabuseroyalcommission.gov.au](mailto:response@childabuseroyalcommission.gov.au)
- by filling out the online submission form at [www.childabuseroyalcommission.gov.au/policy-and-research/issues-papers-submissions/have-your-say](http://www.childabuseroyalcommission.gov.au/policy-and-research/issues-papers-submissions/have-your-say)
- by mail to **GPO Box 5283, Sydney NSW 2001**.

Submissions can be anonymous.

# Appendices

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## Appendix 1 – Letters Patent

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ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,  
Mr Robert Atkinson,  
The Honourable Justice Jennifer Ann Coate,  
Mr Robert William Fitzgerald AM,  
Dr Helen Mary Milroy, and  
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

- a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;
- b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;
- d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

- e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;
- f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;

g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the Royal Commissions Act 1902 or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;

j. the need to establish investigation units to support your inquiry;

k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;

l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;

m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the Royal Commissions Act 1902.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter

related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

**child** means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

**government** means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

**institution** means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and

ii. does not include the family.

**institutional context**: child sexual abuse happens in an **institutional context** if, for example:

iii. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or

iv. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or

v. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

**law** means a law of the Commonwealth or of a State or Territory.

**official**, of an institution, includes:

vi. any representative (however described) of the institution or a related entity; and

vii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and

viii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and

ix. any other person who you consider is, or should be treated as if the person were, an official of the institution.

**related matters** means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

n. require you to begin your inquiry as soon as practicable, and

o. require you to make your inquiry as expeditiously as possible; and

p. require you to submit to Our Governor-General:

i. first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the Gazette, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and

ii. then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the Gazette, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

iii. authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013

Governor-General

By Her Excellency's Command

Prime Minister

## State Letters Patent

All States have now issued Letters Patent or their equivalent, Instruments of Appointment, to appoint the six Commissioners to conduct an inquiry into institutional responses to child sexual abuse under their laws.

The Commissioners were formally appointed under Western Australian law on 22 January 2013, Queensland law on 24 January 2013, New South Wales law on 25 January 2013, Victorian law on 12 February 2013, Tasmanian law on 4 March 2013 and South Australian law on 7 March 2013.

## Amendment to Letters Patent

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,  
Mr Robert Atkinson,  
The Honourable Justice Jennifer Ann Coate,  
Mr Robert William Fitzgerald AM,  
Dr Helen Mary Milroy, and  
Mr Andrew James Marshall Murray

GREETING

WHEREAS We, by Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia, appointed you to be a Commission of inquiry, required and authorized you to inquire into certain matters, and required you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 December 2015.

AND it is desired to amend Our Letters Patent to require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 15 December 2017.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and every other enabling power, amend the Letters Patent issued to you by omitting from subparagraph (p)(i) of the Letters Patent “31 December 2015” and substituting “15 December 2017.”

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia.

Dated 13 November 2014

Governor-General

By His Excellency's Command

Attorney-General

## Appendix 2 – Australian Standards

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### Australian Standard: Customer satisfaction – Guidelines for complaints handling in organizations

The Australian Standard<sup>91</sup> closely mirrors the International Standard on complaint handling.<sup>92</sup> The standards are customer driven and were not devised for dealing with criminal conduct. However, there are aspects applicable to institutions providing services to children.

The Australian Standard addresses complaint handling and includes:

- creating a customer-focused environment that is open to feedback (including complaints) and to resolving any complaints received
- having top management involvement and commitment through adequate resourcing, including training personnel
- recognising and addressing the needs and expectations of complainants
- providing complainants with an open, effective and easy-to-use process
- analysing and evaluating complaints to improve the customer service quality
- auditing the complaint handling process, and reviewing its effectiveness and efficiency.

The Australian Standard identifies nine principles to guide the effective handling of complaints. They are:

- **Visibility** – making information available about how and where to complain
- **Accessibility** – ensuring flexibility in the methods of making complaints, providing support for complainants with special needs, making information about the complaint handling process easy to understand and use
- **Responsiveness** – acknowledging each complaint immediately and addressing it promptly, treating complainants courteously and keeping them informed of the progress of their complaint
- **Objectivity** – addressing each complaint in an equitable, objective and unbiased manner
- **Cost** – making access to the complaint handling process free
- **Confidentiality** – ensuring personal information concerning the complainant is protected from disclosure without the consent of the complainant and is used only for the purposes of addressing the complaint within the organisation
- **Customer-focused approach** – adopting a customer-focused approach to complaint handling, being open to feedback and committed to resolving complaints
- **Accountability** – establishing clear accountability for the actions and decisions of the organisation about complaint handling
- **Continual improvement** – ensuring that continual improvement of the complaint handling process is a permanent objective of the organisation.

## Appendix 3 – Australian Government Investigation Standards

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The Australian Government Investigations Standards establish the minimum standards for all Australian Government agencies conducting investigations. While they are designed

mainly for criminal investigations, they can be applied to non-criminal investigations.<sup>93</sup> A number of points are relevant for investigating complaints of child sexual abuse, including:

- the legislative and policy context for investigations needs to be current and clear
- investigators and people co-ordinating and supervising investigations should be qualified and experienced
- agencies should have protocols for managing relationships and sharing information with other agencies
- agencies should have protocols for managing the media.

The recommended minimum standards are:

- **Investigation policy** – Agencies are to have clear written policies about their investigative function. The policy should include information about the agency’s objectives in carrying out investigations as well as a requirement to refer criminal matters to the police and joint interagency investigation teams where necessary.
- **Performance measures** – Agencies should create performance measures to monitor investigations and results.
- **Commonwealth policy standards** – Agencies should have regard to specified policies.
- **Legal framework** – Agencies are to have access to up-to-date versions of relevant laws and Ministerial Directives.
- **Investigator Qualifications** – The minimum level of training or qualification recommended for investigations staff are:
  - Certificate IV in Government (Investigation) or its equivalent. Ideally, the qualification should be obtained before someone is engaged as an investigator; otherwise the person should be supervised by a qualified investigator until they gain the qualification.
  - Diploma of Government (Investigation) or equivalent for staff who co-ordinate and supervise investigations.
- **Agency relationships** – Agencies should have written procedures for liaison with other agencies. These should include procedures about record keeping and correspondence between agencies. Agencies may develop Memoranda of Understanding or investigation specific Joint Agency Agreements.
- **Information sharing** – Information sharing is to comply with the *Privacy Act 1988* (Cth). Agencies should have documented procedures for responding to requests for information from other agencies including record keeping about information released.
- **International inquiries and foreign evidence** – Agencies should have written procedures for responding to requests for information from foreign agencies.
- **Ethical conduct** – Agencies must conduct investigations in accordance with the Australian Public Service Values and Code of Conduct.
- **Media** – Agencies are to have written procedures about liaison with the media and release of media statements about investigations.

## Appendix 4 – What research and experience tell us

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There is considerable academic research on child sexual abuse in disciplines such as sociology, social work, psychology, medicine, law and criminology. This includes research on:

- the incidence of child sexual abuse
- disclosure of abuse
- perpetrators of child sexual abuse
- professional approaches and tools for assessing and responding to child sexual abuse
- interviewing children
- impacts of child sexual abuse on victims, carers and families.

Much of the literature relates to familial sexual abuse and to responses by the police, child protection authorities, health and allied professionals in the context of criminal investigations or proceedings. While the findings of some studies are relevant, there is an absence of empirical evidence for what constitutes best practice in responding to complaints of institutional child sexual abuse.

In considering available research and information on complaint handling, we have used a framework that encompasses three categories of evidence.<sup>94</sup>

<b>Best available research evidence</b>	This includes empirical or ‘evidence based’ research. There is little empirical evidence that identifies effective approaches to handling complaints of child sexual abuse.
<b>Experiential evidence</b>	This is based on professional insight, understanding, skill and expertise accumulated over time. It is often referred to as intuitive knowledge. In relation to complaints of child sexual abuse, experiential evidence comprises material such as the Australian and international standards on complaint handling, Ombudsman guidelines and expert stakeholder submissions.
<b>Contextual evidence</b>	For the purposes of this paper, this includes evidence given to the Royal Commission during public hearings, evidence and findings from other inquiries, and accepted practice among institutions with experience in handling complaints of child sexual abuse. This type of evidence tells us if a strategy is useful, feasible to implement or accepted by a particular community.

Our suggested best practice principles set out in this paper have been informed by these evidence sources.

The failure of authorities to investigate or to investigate properly is a common theme in the many inquiries into institutional child abuse that have been conducted in Australia<sup>95</sup>, the United Kingdom, the United States and Canada since the mid to late 1980s.<sup>96</sup> It is also a common theme in our case studies.

While there is a lack of research in this field, a small number of studies<sup>97</sup> suggest that investigations of complaints of child sexual abuse are different from other types of child protection investigations. They highlight the complexity of investigations of institutional

child sexual abuse.<sup>98</sup> Inquiry findings and recommendations and observations of oversight bodies, such as an Ombudsman, help to identify the complex factors that institutions need to consider when investigating complaints of child sexual abuse.

## The nature of disclosure

An institution may receive a disclosure of child sexual abuse or concerns about a possible breach of the code of conduct from a victim, another child or children, a staff member, the parent or carer of the victim.

Studies on the disclosure of child sexual abuse<sup>99</sup> reveal some children find it very difficult to disclose sexual abuse; and it might take some time for them to feel confident to do so. It has been our experience from private sessions that child victims of sexual abuse are often more likely to make a number of 'smaller disclosures' rather than a clear cut full disclosure of sexual abuse. For example, the child may first disclose an instance of physical abuse and gauge the reaction before disclosing anything further. By doing this, children are able to test the listening and the respect given by the adult. Drawing out relevant and reliable information, while supporting and protecting the child, requires the listener to have considerable skill and sensitivity.

We have heard from children and young people about the importance of having access to an independent person they can trust before disclosing sexual abuse, as well as a process they know and trust. We have also heard that the challenges created by demand on the OOHC system have contributed to inadequate responses to child sexual abuse.<sup>100</sup> Children do not uniformly have an allocated or consistent case worker. Research is clear that the quality of the relationships that professionals and carers form with children is essential for good outcomes.<sup>101</sup> This principle would also apply to a number of other settings.

The amount of information a child reports is likely to increase with age. Memories will vary according to the type of event, the age of the child at the time of the abusive event, the time between the event and the interview, and the conditions and context of the disclosure.<sup>102</sup>

Studies reinforce the importance of institutions developing an organisational culture where children feel comfortable about raising suspicions or concerns. Studies also reinforce the need for organisational cultures where children, parents and staff are alert to, and identify at an early stage, behaviours that are inappropriate or cause discomfort.<sup>103</sup> Such inappropriate behaviours may be contrary to the institution's code of conduct.<sup>104</sup>

## Relationship of the accused to the child

The accused can be someone known to the child and in some cases close to them, such as a trusted carer, teacher or peer. The authority of the accused or their threats can keep the child from disclosing and can result in a pattern of telling and recanting by the child victim.<sup>105</sup> In cases where the accused is an adult, they may be well known and highly regarded in the institution and community more broadly and can have more credibility than their victim(s).<sup>106</sup>

We have heard in our case studies that the grooming of children can occur, and frequently does occur, in the presence of others.<sup>107</sup>

In addition, 'grooming' the organisation is a typical characteristic of many adults who sexually offend against children. This can result in other staff defending the accused and disbelieving children. A study conducted into abuse in school settings in the United States found that the abusive staff were often popular and were viewed by parents and students to be among the best teachers in a district.<sup>108</sup> Conversely, the victims were often vulnerable students, many with marginal academic and social skills. Staff frequently rallied to defend the accused teacher, often in ways that jeopardised the investigation and intimidated the alleged victim. Some school superintendents reported being chastised by the community for bringing charges against a popular teacher or coach. The study reported that some of the victims were ostracised by other students, teachers and members of the community.

## Support during investigations

**Support for the child and their parents or carers** – Studies<sup>109</sup>, policy and procedure documents and our case studies reinforce the need for communication with, and support for, the child and parents or carers throughout all stages of the investigation. This includes after the investigation has been completed.<sup>110</sup>

**Impact of investigations on other children and staff** – Studies<sup>111</sup> have found that investigations of child sexual abuse can have a significant impact on other children and staff in the institution. Institutional staff members need support as well as assistance on how to support the alleged victim and other children through the investigation process.

**Impact on the person who is the subject of an investigation** – It is important to provide support for those accused of child sexual abuse during and after investigations. This is particularly important where the allegations are not proven.<sup>112</sup>

## Continuous improvement

There is a strong link between complaints and quality improvement. Complaints of child sexual abuse can be used to review and improve practices within the institution.<sup>113</sup> The Victorian Parliamentary Inquiry into the handling of complaints of child abuse by religious and other non-governmental institutions found that few institutions undertake a systemic review of their processes in response to a complaint.<sup>114</sup>

## Children with diverse needs

All children are inherently vulnerable. They need protections to live a safe and happy life in the community, within families and throughout their interactions with institutions.

Certain groups of children require added safeguards to be considered when institutions develop and implement their complaint handling policies and responses. These safeguards need to be inclusive and accessible. We have identified the following groups of children as having additional and diverse needs: children with disability, children from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander children, children who live in statutory or voluntary OOHC.

## Children with disability

In 2009, 4 million Australians were reported as having a disability. Of those, about 290,000 were children aged 0-14 years.<sup>115</sup> In 2009, 7 per cent of all Australian children were reported to have a disability.<sup>116</sup> International research has found the prevalence of sexual abuse of children with disability is estimated to be around three times that of the general population, with some estimates being considerably higher.<sup>117</sup>

Studies have found that some children with disability experience:

- increased vulnerability to sexual abuse in institutional settings<sup>118</sup>
- communication challenges when being interviewed<sup>119</sup>
- difficulties relating to the credibility of their evidence in criminal proceedings<sup>120</sup>
- a need for additional support (a) in making disclosures and (b) during investigation processes. Such support includes access to trusted carers, help to communicate and interpreters.<sup>121</sup>

Reasons why some children with disability are at risk of sexual abuse in institutions include:

- more contact with institutions than other children to access health services, education and employment support, physical care and other assistance<sup>122</sup>
- sometimes being segregated from mainstream society as a result of specialised institutional care and support needs
- children with disability are thought to be disproportionately represented in OOHC and especially residential care, as well as in the juvenile justice system<sup>123</sup>
- children with intellectual disability, communication impairments, behavioural difficulties, and sensory disability are particularly at risk of all forms of abuse.<sup>124</sup>

Research has also identified some of the barriers children with disability experience to disclosing sexual abuse including:<sup>125</sup>

- difficulties communicating
- not understanding they have been abused
- fearing they will lose critical personal support services if they report
- fearing removal from their families
- lacking access to complaint mechanisms<sup>126</sup>
- carers and other responsible adults sometimes ignoring the sexual abuse of children with intellectual disability because of myths that the children are asexual and/or insensitive to pain.<sup>127</sup>

These issues affect every stage in the complaints process. Disability-specific needs should be considered when developing institutions' complaint handling policies, codes of conduct, risk assessments, risk management plans and planning investigations.<sup>128</sup>

## Children from culturally and linguistically diverse backgrounds

More than a quarter (26 per cent) of the Australian population was born overseas, 45 per cent have at least one parent who was born overseas, and nearly 20 per cent speak a language other than English at home.<sup>129</sup> The culturally and linguistically diverse backgrounds

of children should be considered by institutions throughout the complaints process, and responses should be tailored accordingly.

Research on ethnicity and cultural issues about child maltreatment<sup>130</sup> and child sexual abuse is sparse.<sup>131</sup> There is even less research in the context of institutions. Some international studies<sup>132</sup> provide insight into historical, cultural and language factors to be taken into account when investigating allegations of child sexual abuse involving children from culturally and linguistically diverse backgrounds. These studies signal the need for policies and procedures to make reference to cultural and linguistic factors in:

- planning investigations
- communicating with children and their families and carers
- supporting children during and after an investigation
- training professionals in cultural awareness and sensitivity to cultural issues when responding to allegations of child sexual abuse.

The ability of children from culturally and linguistically diverse backgrounds to navigate complaints processes about child sexual abuse is informed by:

- their proficiency in English or their literacy
- the amount of time they have lived in Australia
- their settlement experience since arriving
- their pre-arrival experience – for example, whether the victim and their family experienced torture or trauma
- their visa status – for example, children and families on temporary visas may be reluctant to be the subject of attention, fearing it will affect their ability to remain in Australia
- cultural attitudes to sex, sexuality and sexual abuse.

## Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander people constitute about 3 per cent of the Australian population. The Australian Institute of Health and Welfare reported in 2013-14:

- 11,270 (38.8 per 1,000) Aboriginal and Torres Strait Islander children were the subject of substantiation of a child protection notification for physical, sexual or emotional abuse or neglect<sup>133</sup>
- only 998 (8.9 per cent) of these children were the subject of a substantiated notification of sexual abuse. This compares with 14 per cent substantiation of child sexual abuse notifications for all children.<sup>134</sup>

Australian research shows that the level of disclosure and reporting of child sexual abuse is particularly low in remote Aboriginal and Torres Strait Islander communities.<sup>135</sup> This may be due to a combination of factors, including historical factors relating to trauma and disruption<sup>136</sup> and situational factors. Situational factors may include social, economic<sup>137</sup>, geographic and cultural barriers to the disclosure and effective response to allegations. It may also include issues relating to managing conflicts of interest, maintaining confidentiality<sup>138</sup> and gaining access to culturally appropriate support services for victims, their families and carers.<sup>139</sup>

The widespread use of kinship care (which has many strengths) may contribute to the low level of reporting, due to the potential barrier of reporting possible sexual abuse by a family member.<sup>140</sup> Kinship carers often do not have an allocated case manager and may be more subjected to family secrecy and loyalty. In addition, children and family may be less likely to report sexual abuse because of family trauma and fear of losing the child to the 'system.'<sup>141</sup>

Cultural barriers to disclosure can include:

- mistrust of and disillusionment with government authorities
- concern about possible repercussions for the child, family and other community members<sup>142</sup>
- difficulties in maintaining confidentiality in small communities<sup>143</sup>
- prospects of having to give evidence in court proceedings.<sup>144</sup>

Studies have identified the importance of knowledge and awareness of each community's unique culture and the need to tailor the investigation process to align with the culture. This includes being aware of and understanding cultural details such as:

- communication styles including posture and eye contact
- measures of time such as day and night
- relationships to cultural ceremonies and community dynamics and extended family relationships.

A one-size-fits-all complaints approach is not appropriate or effective among Aboriginal and Torres Strait Islander communities.

Studies highlight the importance of involving Aboriginal and Torres Strait Islander communities in the development of institutional policies and procedures for responding to complaints of child sexual abuse.<sup>145</sup> An initiative in Canada involved establishing a regional abuse unit serving nine Manitoba First Nation communities, which initially investigated notifications and assisted local workers who then took responsibility for follow-up services and case management. An evaluation of the model found it to be effective in ensuring the required expertise in investigations, while protecting local community staff from some of the conflicts that can occur around initial abuse referrals in small communities.<sup>146</sup>

The NSW Ombudsman has commented on the increasing numbers of Aboriginal adults coming forward to report sexual abuse they experienced as a child and the need to respond appropriately to allegations of historical abuse when they are made.<sup>147</sup> Taking this into account, institutions that either currently and/ or historically serve Aboriginal and Torres Strait Islander children should have proactive strategies to manage both historical and contemporary complaints of child sexual abuse.

## Children in out-of-home care

Children who cannot live at home safely in the care of their parents can be cared for outside their family in OOHC. State and territory governments are responsible for statutory child protection services. Non-government organisations also deliver OOHC services including placement and family support services.

Of the 43,009 children in OOHC at 30 June 2014, about 95 per cent were in three types of care or placement types: foster care, relative/kinship care or residential care.<sup>148</sup>

There are 13 national standards for OOHC that aim to improve the quality of OOHC and promote a nationally consistent approach.<sup>149</sup> Some of the overarching principles and standards relevant to complaint handling include:

- that children are given opportunities for their voice to be heard and respected (Principle 3)
- that children participate in decisions that have an impact on their lives (Standard 2).

Research shows children placed in OOHC can be particularly vulnerable to sexual abuse due to previous sexual harm and other victimisation, social and economic deprivation, family trauma and dislocation from family, community and cultural challenges.<sup>150</sup> The cumulative harm that children have often experienced prior to entering care can impact on their development and capacity to form trusting relationships that may support disclosures of abuse and promote their safety. Instability and placement changes add to the difficulty children may have in disclosing sexual abuse, given the loss of significant relationships and emotional support with each placement change.

Research has highlighted the need for clear, child-friendly accessible complaint mechanisms.<sup>151</sup> The 2013 CREATE Report Card found that 50 percent of young people in OOHC did not know how to make a complaint or that they had a right to make a complaint.<sup>152</sup>

## Previous inquiries into OOHC

In the past 15 years national and state inquiries into child sexual abuse in OOHC have made recommendations, some of which are reflected in the suggested best practice principles in Section 3 of this paper. These recommendations include:

- conducting independent investigations<sup>153</sup>
- allowing independent oversight of investigations<sup>154</sup>
- having clear and consistent protocols for reporting and responding to complaints<sup>155</sup>
- tailoring complaints processes to the needs of the child<sup>156</sup>
- providing support for the victim of child sexual abuse<sup>157</sup>
- training staff and carers in sexual abuse and how to report concerns<sup>158</sup>
- involving children in complaints processes.<sup>159</sup>

## OOHC information and evidence to the Royal Commission

We have heard about the trauma experienced by many adults who were sexually abused while in OOHC and the painful legacy of this abuse. To date, OOHC represents more than 40 per cent of all allegations of abuse identified during our private sessions.<sup>160</sup> During *Case Study 24: Preventing child sexual abuse in OOHC* recent care leavers gave evidence about the barriers to making a complaint about sexual abuse including:<sup>161</sup>

- the child is often dependent on the person (carer)/employee or organisation the child is seeking to make a complaint about

- lack of knowledge and or trust in the process
- low self-esteem, fear to disclose, embarrassment
- need for support and confidence in a trusted person
- caseworker turnover/caseworker too busy
- lack of knowledge about child sexual abuse, the complaints process or their rights.

Additional barriers identified in our private sessions and consultations include:

- not having access to a trusted independent person to talk to
- fear of losing their current placement
- fear of other repercussions – many young people ‘got in trouble’ for making a complaint
- not being believed – a number of young people said words to the effect that ‘the police don’t believe you because you’re just a foster kid’
- many children and young people in OOHC are used to putting up with poor treatment – they ‘take it for granted’ that they’ll be mistreated.

### Child-to-child sexual abuse

Sexually harmful behaviour may be exhibited by children in institutional settings. We have heard in private sessions from survivors who have experienced sexual assault, indecent assault, voyeurism or being exposed to pornography by other children. Online sexually harmful behaviour comprises a number of child-to-child sexual abuse incidents within contemporary institutional settings. According to recent data, sexually-based cyber bullying<sup>162</sup>, sexting<sup>163</sup>, and non-consensual distribution of child abuse material<sup>164</sup> all occurred in New South Wales schools in the latter part of 2014.

The incidence and risks associated with child-to-child sexual abuse are not generally well understood or recognised. Very few complaint handling policies or other documents reviewed in the course of preparing this paper deal in any detail with complaints of child-to-child sexual abuse, as distinct from the sexual abuse of children by adults.

In cases of alleged child-to-child sexual abuse, the child against whom the allegation is made may also be in the care of the institution and the behaviour may be a sign of deep emotional or psychological disturbance. In addition, children with sexually harmful behaviours are often victims of trauma and can have complex therapeutic needs themselves. The sensitivity surrounding complaints of this type calls for an even greater degree of rigour in the institutional response.

In all states and territories and the Commonwealth, children below 10 years of age cannot be held liable for a criminal offence.<sup>165</sup> Children between 10 and 14 years can only be liable for an offence if it is established the child knows their conduct is wrong.<sup>166</sup> Although children aged 10 and older can generally be held criminally responsible for sexually harmful behaviour that constitutes a criminal offence if it can be established that they knew this behaviour was wrong<sup>167</sup>, a more promising focus is on early interventions to assist in rehabilitation.<sup>168</sup> The *Children, Youth and Families Act 2005* (Vic) provides for intervention when a report of sexually abusive behaviour by a child between 10 and 14 years is received and the child needs therapeutic treatment due to their behaviour.<sup>169</sup>

In schools, principals have a significant role in managing risks when allegations of sexual abuse by one child against another are made.<sup>170</sup> Balancing the need to minimise the risk of harm to other children with the need to maintain confidentiality and respect the privacy and reputation of the child who has sexually harmed can be challenging. The need to provide support and assistance for the victim, the child who has sexually harmed and other children at the school also has to be considered. Communication with staff needs to be carefully managed, including considering who needs to know what. Managing possible resistance from staff about the placement of a child who has sexually harmed in the school also needs to be managed. Training for principals should prepare them for managing these difficult situations.<sup>171</sup> Principals also need to know who to contact for advice and assistance.

## End Notes

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- <sup>1</sup> *Letters Patent* (Cth), 11 January 2013, (a), (b), (c).
- <sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report*, vol 1, Sydney, 2014, p 31.
- <sup>3</sup> As at 29 January 2016, the Royal Commission had held 4,645 private sessions.
- <sup>4</sup> Parliament of Victoria Family and Community Development Committee, *Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations*, vol 2, 2013, p xxxvii.
- <sup>5</sup> M Colton, S Roberts & M Vanstone, 'Learning lessons from men who have sexually abused children', *The Howard Journal of Criminal Justice*, vol 51, no 1, 2012, pp 79–93.
- <sup>6</sup> Some jurisdictions have offences that cover online and electronic grooming. This includes Commonwealth, ACT, Qld and WA. See, for example, *Criminal Code Act 1995* (Cth) s 474.26 and s 474.27, which make it an offence to use a carriage service to procure or groom a child for sexual activity. Vic and NSW have grooming conduct offences. See *Crimes Act 1958* (Vic), s 49B. Subsection 49B(2) specifies: 'A person of or over the age of 18 years must not communicate, by words or conduct, with a child under the age of 16 years or a person under whose care, supervision or authority the child is (whether or not a response is made to the communication) with the intention of facilitating the child's engagement in or involvement in a sexual offence with that person or another person who is of or over the age of 18 years'; *Crimes Act 1900* (NSW), s 66EB. Subsection 66EB(3) specifies: 'An adult person: (a) who engages in any conduct that exposes a child to indecent material or provides a child with an intoxicating substance, and (b) who does so with the intention of making it easier to procure the child for unlawful sexual activity with that or any other person, is guilty of an offence'.
- <sup>7</sup> Australian Children's Commissioners and Guardians, *Principles for child safety in organisations*, 2013.
- <sup>8</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 2: YMCA NSW's response to the conduct of Jonathan Lord*, Sydney, 2014.
- <sup>9</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 5: Response of the Salvation Army to child sexual abuse at its boys homes in New South Wales and Queensland*, Sydney, 2015.
- <sup>10</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes*, Sydney, 2015.
- <sup>11</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese*, Sydney, 2014.
- <sup>12</sup> E Munro & A Fish, *Hear no evil see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2015.
- <sup>13</sup> T Moore, M McArthur, D Noble-Carr & D Harcourt, *Taking us seriously: Children and young people talk about safety and institutional responses to their safety concerns*, Royal Commission into Institutional Responses to Child Sexual Abuse, Melbourne, 2015, p 8.

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- <sup>14</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Working with Children Checks Report*, Sydney, 2015.
- <sup>15</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, Sydney, 2015.
- <sup>16</sup> United Nations, *Convention on the Rights of the Child*, 1990. See, for example, Article 19.
- <sup>17</sup> Australian Children’s Commissioners and Guardians, above note 7.
- <sup>18</sup> United Nations, above note 16, p 1.
- <sup>19</sup> Australian Human Rights Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 2: Towards Healing*, 2013, p 4 and p 7; United Nations, above note 16, see Article 20.
- <sup>20</sup> United Nations, *Convention on the Rights of Persons with Disabilities*, 2008.
- <sup>21</sup> The principles discussed in this section relate to generic handling of complaints by organisations. There are various statutory complaints schemes that might sometimes apply to complaints of child sexual abuse. See *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) and *Health Services (Conciliation and Review) Act 1987* (Vic). See also, references identified in end note 22 below.
- <sup>22</sup> Commonwealth Ombudsman, *Better practice guide to complaint handling*, Commonwealth of Australia, April 2009; NSW Ombudsman, *Effective complaint handling guidelines* (2<sup>nd</sup> edn), 2010; NSW Ombudsman, *Investigating complaints: A manual for investigators*, 2004; Victorian Ombudsman, *Good practice guide: Victorian Ombudsman’s guide to complaint handling for Victorian public sector agencies*, 2007; Ombudsman Tasmania, *Guidelines for complaint handling*, 2013; Ombudsman Western Australia, *Guidelines on complaint handling*, 2010; Queensland Ombudsman, *Effective complaints management: Information for Queensland’s public sector agencies (Fact Sheet series)*, State of Queensland, 2006.
- <sup>23</sup> Queensland Ombudsman, *Effective complaints management: Setting the scene (Fact Sheet series)*, Brisbane, 2006, p 1.
- <sup>24</sup> Commonwealth Ombudsman, *Better practice guide to complaint handling*, Canberra 2009, p 11; Ombudsman Western Australia, *Guidelines on conducting investigations*, 2009, p 13.
- <sup>25</sup> Ombudsman Tasmania, *Guidelines for complaint handling*, Hobart, 2013, p 4.
- <sup>26</sup> Queensland Ombudsman, above note 23, p 2.
- <sup>27</sup> Victorian Ombudsman, *Improving responses to allegations involving child sexual assault*, 2006. See recommendation 17, p 32.
- <sup>28</sup> Victorian Ombudsman, *Good practice guide: Victorian Ombudsman’s guide to complaint handling for Victorian public sector agencies*, 2007, p 8 and p 54.
- <sup>29</sup> Victorian Ombudsman, above note 27, see recommendations 11-13.
- <sup>30</sup> B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 2.
- <sup>31</sup> *ibid*, p 17. *Family Law Act 1975* (Cth) s 67ZA; *Children and Young People Act 2008* (ACT), s 356(2)(a), (c), (d), (f) and (h); *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 27(1); *Care and Protection of Children Act* (NT), s 26; *Child Protection Act 1999* (Qld), s 13E(1)(a)–(d) and s 186; *Children’s Protection Act 1993* (SA), s 11(2)(a), (b), (e), (h) and (j); *Children, Young Persons and their Families Act 1997* (Tas), s 14(1)(a), (b), (e) and (h); *Children, Youth and Families Act 2005* (Vic), s 182(1)(a), (b), (c), (d) and (e); *Children and Community Services Act 2004* (WA), s

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- 124B(1)(a). In Queensland, police officers are only mandatory reporters if they are responsible for reporting under a direction given by the commissioner of the police service under the *Police Service Administration Act 1990* (Qld); *Child Protection Act 1999* (Qld), s 13E(1). In the Northern Territory, all persons have mandatory reporting obligations and health practitioners have additional mandatory reporting obligations: see *Care and Protection of Children Act* (NT), s 26.
- <sup>32</sup> *Crimes Act 1900* (NSW), s 316.
- <sup>33</sup> *Crimes Act 1900* (NSW), s 4.
- <sup>34</sup> For example, an act of indecency against a child under 16 is punishable by two years' imprisonment: *Crimes Act 1900* (NSW), s 61N(1).
- <sup>35</sup> *Crimes Act 1958* (Vic), s 327(2).
- <sup>36</sup> A person is authorised to report a suspicion that a child or young person is being abused or is at risk of abuse in the ACT: see *Children and Young People Act 2008* (ACT), s 354. A person may make a report if the person has a significant concern for the wellbeing of a child in Victoria: see *Children, Youth and Families Act 2005* (Vic), ss 3(1), cls (28)-(29). In NSW, a person who has reasonable grounds to suspect that a child or young person is at risk of significant harm may make a report: *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 24.
- <sup>37</sup> *Children, Youth and Families Act 2005* (Vic), s 40; *Children and Young People Act 2008* (ACT), s 874; *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 29.
- <sup>38</sup> For example, see *Whistleblowers Protection Act 1993* (SA), s 5(1).
- <sup>39</sup> *Ombudsman Act 1974* (NSW), ss 25A, 25C.
- <sup>40</sup> *Ombudsman Act 1974* (NSW), ss 25E, 25G.
- <sup>41</sup> *Ombudsman Act 1974* (NSW), s 25G(5).
- <sup>42</sup> *Disability Inclusion Act 2014* (NSW), s 31.
- <sup>43</sup> *Disability Inclusion Act 2014* (NSW), s 20(1); *Disability Inclusion Regulation 2014* (NSW), cl 8 and Sch 1, Standard 4.
- <sup>44</sup> *Disability Inclusion Act 2014* (NSW), ss 33, 34.
- <sup>45</sup> *Fair Work Act 2009* (Cth), s 50.
- <sup>46</sup> *Fair Work Act 2009* (Cth), s 539.
- <sup>47</sup> *Child Protection Regulation 2011* (Qld), cl 7(1) and (2)(d).
- <sup>48</sup> For example, see *School Education Act 1999* (WA), s 159(1)(k) and *Registration Standards and Requirements 2015*, (WA), cl 11.1.
- <sup>49</sup> *Education and Care Services National Law Act 2010* (Cth), s 172(f); *Education and Care Services National Regulations 2011* (Cth), reg 168(1), (2)(o), 173(2)(b). The National Law has been adopted in all states and territories: see *Education and Care Services National Law (ACT) Act 2011* (ACT), s 6; *Children (Education and Care Services National Law Application) Act 2010* (NSW), s 4; *Education and Care Services (National Uniform Legislation) Act* (NT), s 4; *Education and Care Services National Law (Queensland) Act 2011* (Qld), s 4; *Education and Early Childhood Services (Registration and Standards) Act 2011* (SA), s 10(1); *Education and Care Services National Law (Application) Act 2011* (Tas), s 4; *Education and Care Services National Law Act 2010* (Vic), s 4; *Education and Care Services National Law (WA) Act 2012* (WA), s 4.
- <sup>50</sup> For examples, see *School Education Regulations 2000* (WA), cl 55(1); the policy document, *Grievances guidelines for parents and the community*, which the Tasmanian Department of Education relies upon; the policy document *Managing complaints, misconduct and unsatisfactory*

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*performance* in relation to the Teaching Service and the Public Service, which the Victorian Department of Education and Early Childhood Development relies upon.

- <sup>51</sup> For examples, see Children (Detention Centres) Regulation 2015 (NSW), cl 48; *Youth Justice Act 1992* (Qld), ss 267(1)(c), 277(1) and 282J(1); *Children, Youth and Families Act 2005* (Vic), s 482(2)(e).
- <sup>52</sup> For example, see *Government Sector Employment Rules 2014* (NSW), Part 8.
- <sup>53</sup> The *Privacy Act 1988* (Cth), which applies to many private institutions, prohibits the disclosure of personal information for a purpose other than that for which the information was collected, unless certain exceptions apply (see Australian Privacy Principle 6 in Sch 1). These exceptions authorise the reporting of suspicions to law enforcement authorities (see Australian Privacy Principle 6.2(c) and (e) and s 16A, item 2 of table).
- <sup>54</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW), ss 245C, 245CA and 245D; *Care and Protection of Children Act* (NT), ss 293D and 293E.
- <sup>55</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 245G; *Care and Protection of Children Act* (NT), s 293A(2).
- <sup>56</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 245A(2)(d); *Care and Protection of Children Act* (NT), s 293F.
- <sup>57</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 245C (1)(a); *Care and Protection of Children Act* (NT), s 293D(2)(c).
- <sup>58</sup> P Latimer & AJ Brown, 'Whistleblower laws: International best practice', *UNSW Law Journal*, vol 31, no 3, 2008, pp 766-794.
- <sup>59</sup> Evidence of Dr Darryl Higgins, Parliament of Victoria Family and Community Development Committee, above note 4, p 318.
- <sup>60</sup> Consultations with the NSW Deputy Ombudsman, Steve Kinmond (2 December 2014) and the NSW Children's Guardian, Kerry Boland (3 December 2014).
- <sup>61</sup> A review of complaint handling mechanisms in the international development assistance sector emphasised the importance of participation by the beneficiary community in designing complaints mechanisms that are usable. This includes children's participation. See V Martin, *Literature review: complaints mechanisms and handling of exploitation and abuse*, Humanitarian Accountability Partnership Standard Review Process Working Group on Handling Complaints of Exploitation and Abuse, 2010.
- <sup>62</sup> See E Munro & A Fish, above note 12. Munro & Fish state that frequent, open and supportive supervision helps counteract the difficulties people can face when making sense of ambiguous information about colleagues. Also see, Royal Commission into Institutional Responses to Child Sexual Abuse, above note 8 and Parliament of Victoria Family and Community Development Committee, above note 4, p 254.
- <sup>63</sup> For example, see The Salvation Army, *SafeSalvos manual: Caring for kids, youth and other vulnerable people*, Sydney, 2014; Swimming Australia, *Swimming Australia child welfare policy: General information and procedures*, 2014; YMCA, *Safeguarding children and young people: Our movement's child protection policy*, 2014.
- <sup>64</sup> Australian Institute of Family Studies, *Responding to children and young people's disclosures of abuse*, March 2015.
- <sup>65</sup> K London, M Bruck, SJ Ceci & DW Shuman, 'Disclosure of child sexual abuse: What does the research tell us about the ways that children tell?', *Psychology, Public Policy, and Law*, vol 11, no 1, 2005, pp 194-226.

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- <sup>66</sup> Aboriginal Child Family and Community Care State Secretariat, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Royal Commission Issues Paper No 4: Preventing sexual abuse of children in out-of-home care*, November 2013, p 8.
- <sup>67</sup> Australian Psychological Society, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Royal Commission Issues Paper 4: Preventing sexual abuse of children in out of home care*, November 2013, pp 8-9.
- <sup>68</sup> Aboriginal Child Family and Community Care State Secretariat, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Royal Commission Issues Paper No 4: Preventing sexual abuse of children in out-of-home care*, November 2013, p 8.
- <sup>69</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, above note 15.
- <sup>70</sup> D Lisak, L Gardiner, SC Nicksa & AM Cole, 'False allegations of sexual assault: An analysis of ten years of reported cases', *Violence against Women*, vol 16, no 12, 2010, pp 1318-1334.
- <sup>71</sup> DPH Jones & E McGraw, 'Reliable and fictitious accounts of sexual abuse to children', *Journal of Interpersonal Violence*, vol 2, no 1, 1987, pp 27-45; RK Oates, DPH Jones, D Denson, A Sirotnak, N Gary & RD Krugman, 'Erroneous concerns about child sexual abuse', *Child Abuse & Neglect*, vol 24, no 1, 2000, pp 149-157. Oates et al noted 1.5 per cent of concluded cases of alleged child sexual abuse were deemed to emanate from false allegations. Jones & McGraw found that out of their sample of 576 reports of child sexual abuse, 8 per cent appeared to be fictitious.
- <sup>72</sup> G Anthony & J Watkeys, 'False allegations in child sexual abuse: The pattern of referral in an area where reporting is not mandatory', *Children & Society*, vol 5, no 2, 1991, pp 111-122.
- <sup>73</sup> Also see N Trocme & N Bala, 'False allegations of abuse and neglect when parents separate', *Child Abuse & Neglect*, vol 29, no 12, 2005, pp 1333-1345. This paper documents the 1998 Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-98). It was the first national study that documented rates of intentionally false allegations of abuse and neglect investigated by child welfare services in Canada. The paper summarises the characteristics associated with intentionally false reports of child abuse and neglect within the context of parental separation. Four per cent of cases were considered to be intentionally fabricated. Where custody of the child was disputed – the false allegation rate was higher at 12 per cent.
- <sup>74</sup> RK Oates et al, above note 71.
- <sup>75</sup> C Shakeshaft & A Cohan, 'Sexual abuse of students by school personnel', *Phi Delta Kappan*, vol 76, no 7, 1995, pp 512.
- <sup>76</sup> DM Fergusson, LJ Horwood & LJ Woodward, 'The stability of child abuse reports: A longitudinal study of the reporting behaviour of young adults', *Psychological medicine*, vol 30, no 03, 2000, pp 529-544.
- <sup>77</sup> Not all institutions provide counselling support to the alleged victim and support provided is not always adequate. For example section 21.6 'Pastoral and other support' in above note 4, pp 437-442.
- <sup>78</sup> Welsh Assembly Government, *Safeguarding children: Working together under the Children Act 2004*, 2006, p 281.
- <sup>79</sup> *Kioa v West* (1985) 159 CLR 550.
- <sup>80</sup> D Finkelhor, L Williams, N Burns & M Kalinowski, *Sexual abuse in day care: A national study: Final report*, Family Research Laboratory, University of New Hampshire, 1988; A McKee & A Birnie, 'Differences between journalistic and academic accounts of child sexual abuse in Australia', *Australian Journal of Communication*, vol 36, no 3, 2009, pp 93-110.

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- <sup>81</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of institutions to the conduct of Steven Larkins*, Sydney, 2014; Royal Commission into Institutional Responses to Child Sexual Abuse, *Case Study 23: Knox Grammar School*, February 2015.
- <sup>82</sup> BM DeBelle, *Royal Commission 2012-2013: Report of independent education inquiry*, Government of South Australia, Adelaide, 2013.
- <sup>83</sup> *Ombudsman Act 1974* (NSW), s 25C.
- <sup>84</sup> Currently Professor John McMillan.
- <sup>85</sup> *Ombudsman Act 1974* (NSW), s 25DA. See also the *Child Protection (Working with Children) Act 2012*, Sch 1 cl 2A.
- <sup>86</sup> *Ombudsman Act 1974* (NSW), s 25E.
- <sup>87</sup> *Ombudsman Act 1974* (NSW), s 25F.
- <sup>88</sup> *Ombudsman Act 1974* (NSW), s 25G.
- <sup>89</sup> See Parliament of Victoria Family and Community Development Committee, above note 4, pp 372-374.
- <sup>90</sup> Transcript of P Clarke, Case Study 24 at T15029:41-T15030:11 (Day 146), 3 July 2015; Transcript of C Field, Case Study 24 at T15116:11-29 (Day 146), 3 July 2015; Transcript of D Glass, Case Study 24 at T15041:11-T15042:7 (Day 146), 3 July 2015; Transcript of H Watchirs, Case Study 24 at T15120:29-30 (Day 146), 3 July 2015.
- <sup>91</sup> Standards Australia, *Customer satisfaction – Guidelines for complaints handling in organisations*, 2006.
- <sup>92</sup> International Organisation for Standardization (ISO), *Quality management – Customer satisfaction – Guidelines for complaints handling in organisations*, Standards Australia, 2014.
- <sup>93</sup> Australian Government, *Australian Government Investigation Standards*, Commonwealth of Australia, Canberra, 2011. See the introduction by the Australian Federal Police Commissioner.
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