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Our ref: C/2013/6776

14 March 2014

*emailed to Monica
@ Royal Commission
on 14 March 2014.*

Ms Monica Wolf
Director Analysis
Royal Commission into Institutional Responses to Child Abuse
GPO Box 5283
Sydney NSW 2001

By email: REDACTED

Dear Ms Wolf,

Provision of information regarding reportable conduct matters to victims and families

Our office is bringing to your attention a systemic issue relevant to the reportable conduct scheme under Part 3A of the *Ombudsman Act 1974* which the Commission may wish to consider. The issue relates to the provision of information to victims and their families regarding reportable conduct investigations.

The following information is provided to you pursuant to s34(1)(1b) of the *Ombudsman Act 1974*.

In November 2013, [CDN] and [CDP] - the parents of two children who were the alleged victims of sexual abuse allegedly perpetrated by [CDM] volunteer cook and maintenance person at [CEG] [REDACTED] (the centre) - raised with our office their concerns about the level of information they were provided with as part of the reportable conduct investigation into [CDM]'s conduct.

The reportable conduct investigation into [CDM]'s conduct has been finalised, and a referral of the findings of the investigation was made by the centre Director to the Commission for Children and Young People in 2013. Our office has separately shared additional relevant information with the Office of the Children's Guardian.

The issue [CDN] and [CDP] raised regarding the provision of information relevant to a reportable conduct investigation to victims and their family members is a significant systemic issue that our office has been considering for some time. As you would be aware, under the current legislative scheme, the information which can be provided to victims and their families pertaining to the outcome of a reportable conduct investigation is limited. Attached is the Solicitor General's advice in this regard; of particular relevance are pages 4 - 5.

In this particular case, [CDN] and [CDP] identified the lack of engagement with themselves and other victims' parents as an issue of concern. In my opinion, this case provides a useful example of the importance of the reportable conduct scheme balancing confidentiality, with the need for victims' families to be given appropriate information about the progress and outcomes of an investigation.

Representatives from this office have met with both [CDN] and [CDP] and we are in the process of finalising our response to the issues they have raised.

The issue raised by these parents in this case was identified by our office as a problem in early 2013. Since then, we have taken a number of steps to address this issue.

For example, in May 2013 our office held a roundtable meeting with relevant stakeholders seeking to explore this issue. Resulting from this meeting, the Office of the Children's Guardian is currently drafting an amendment to Part 3A of the *Ombudsman Act 1974* in line with the following:

Providing information to alleged victims of reportable allegations and/or their parents/carers

- 1 The Ombudsman has historically advised agencies subject to Part 3A of the Ombudsman Act, as part of its oversight of agency systems for handling and responding to reportable allegations, to address any support needs of alleged victims of reportable conduct and to advise them (and/or their parents/carers), where appropriate, of the outcome of reportable allegation investigations.
- 2 The Solicitor-General has recently advised that advice about the outcome of an investigation could be a disclosure of 'personal information' within the meaning of section 4 of the *Privacy and Personal Information Protection Act 1998*. Such advice may also be subject to the disclosure restrictions of the *Privacy Act 1988* (Cth), which applies to a number of designated non-government agencies.
- 3 While the NSW Privacy Commissioner is moving to administratively address this matter for NSW public sector agencies and the Ombudsman is pursuing similar action with the Commonwealth Information Commissioner, there are some smaller non-government designated agencies and other NGOs that are not subject to either NSW or Commonwealth privacy legislation or the protections from civil proceedings that are provided in those Acts.
- 4 It is therefore proposed, consistent with the recommendations of the Victims of Reportable Conduct Roundtable, that the *Ombudsman Act* be amended to expressly permit agencies to provide advice to the involved child and/or parents/carers on the progress and outcome of reportable allegation investigations, including the finding and action taken in response to the finding. The Ombudsman would issue guidance as to appropriate disclosure arrangements.
- 5 This approach will ensure that the civil protections for disclosure of information at s25H of the Ombudsman Act apply. It is also consistent with the approach taken under Part 8A of the *Police Act 1990*, which expressly provides for police informing complainants of the progress and outcomes of police investigations.

Whilst we believe the proposed legislative changes will go some way to addressing the shortcomings in the current scheme, we believe there is still work to be done in terms of identifying best practice in the area of provision of information to victims and their families. This is an area the Royal Commission may wish to consider further.

If you have any queries about the information provided, or require further assistance, please contact Steve Kinmond on REDACTED

Yours sincerely



Steve Kinmond
Deputy Ombudsman