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6 April 2016

Royal Commission into
Institutional Responses to
Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001
via email: response@childabuseroyalcommission.gov.au

Dear Commissioners

RE: Consultation Paper - Best practice principles in responding to complaints of child sexual abuse in institutional contexts

We refer to this Consultation Paper and the invitation to make submissions to the Commission's consideration of this area.

Preamble

Christian Schools Australia Ltd (CSA) is an association of over 140 schools, with over 60,000 students and more than 3,000 teaching staff. CSA's commitment is to see Christian beliefs and values impact on all aspects of practice and community life in its member schools. With Biblically based beliefs as our foundation CSA provides leadership, services and resources for its members, and generally works to advance the cause of Christian schooling.

Our member schools are autonomous legal entities, independently governed, locally based charitable organisations. Each is subject to oversight as a charity by the Australian Charities and Not for Profit Commission (ACNC) and, depending on their corporate structure, either the Australian Securities and Investments Commission (ASIC) or State/Territory regulators. All member schools comply with State/Territory requirements in relation to the registration and accreditation of non-government schools as well as meeting requirements under Commonwealth legislation applicable to schools.

While in most states support related to child protection issues are largely provided by other independent school sector bodies, in New South Wales and the Australian Capital Territory CSA provides its members with comprehensive support in this area. In NSW this support has a unique characteristic, being a 'Class and Kind' order in place through the NSW Ombudsman. A range of support and training materials have been developed underpinning this.

We have engaged a specialist external provider to deliver training for schools into the conduct of investigations, and handling of allegations of reportable conduct. This is provided to all participating member schools in NSW/ACT. Under our service provision schools can outsource their investigations to the specialist external provider. CSA conducts regular professional development and briefings for schools covering duty of care, mandatory reporting and investigations.

The NSW Ombudsman was heavily involved in assisting CSA to develop its processes prior to approving the Class and Kind agreement, and monitors compliance and outcomes. A recent review by the NSW Ombudsman found that “CSA has complied with its obligations in order to secure inclusion for its participating member schools in the determination... the overall initiative by CSA through its engagement of [CSA’s provider] structured support systems, and the goodwill and engagement by schools, is well progressed. The overall management of investigations, documentation and record keeping by [CSA ‘s provider] in relation to its training, advice sought and received, investigations conducted and other services to schools, is of a high standard.”

CSA considers that this system has been of great benefit in assisting schools to improve practice and meet their obligations under child protection legislation. The ongoing training requirement is considered a major benefit in ensuring relevant staff are up to date. The system also provides greater certainty that correct procedures will be followed when handling complaints.

A National Child Protection Framework

As indicated in our submission to Issues Paper 9, on balance, Christian Schools Australia considers the legislative and procedural framework in New South Wales, and **in particular the Class and Kind procedures overseen by the NSW Ombudsman**, are superior to arrangements in other jurisdictions. Our experience with the Class and Kind procedures have clearly demonstrated their value in ensuring ongoing engagement by institutions with child protection issues, ensuring a more ‘child safe’ environment.

Our submission remains that this framework should be considered at a national level and we warmly welcome the announcement following the 1 April meeting that COAG has agreed, in-principle, to harmonise reportable conduct schemes, similar to the current model in operation in NSW and announced in the ACT and Victoria. We encourage the Commission to actively seek to ensure that the harmonised schemes are as consistent as possible and incorporate a Class and Kind agreement mechanism.

Suggested best practice principles

In responding to the matters on which feedback is sought we view that the six best practice principles outlined on page 17 of the Consultation Paper are well considered and sound. While broad in scope, as necessitated by their broad range of application, the principles address the key essential elements. We accept that it is easy to be critical, and such principles can never encompass fully what is being sought, but by way of constructive feedback:

- ***Principle 2 - A child-focused complaint handling policy.***

The principles talk of this being a policy ‘accessible to all children’ which we suggest doesn’t go far enough. Noting that the complaint process is addressed in Principle 3 we would suggest that there are at least elements of the broader policy which need to be ***understood*** by all children. This

would include matters such as the sort of conduct that is unacceptable and would trigger the type of complaint that Principle 3 envisages.

- ***Principle 3 - A process that is clear and accessible to children and adults, and emphasises responsiveness and accountability.***

Once again we would suggest that 'understandable' may be a better term than 'accessible'. The critical issue is that children can act upon the process as they *understand* it and, as appropriate, have decision making capabilities within the process. The support alluded to within the principle may need to encompass advocacy for those children with special needs who may otherwise have difficulty in engaging with the complaints process.

While we also agree that the complaints process should be responsive and 'prompt' this cannot be at the expense of rigour. A rushed process that leads to re-investigation, for example, is in nobody's best interests. Accountability may identify the weaknesses in hindsight but this will be of little comfort to those involved in the initial incident.

Complaint handling policies

Once again we endorse the majority of guidance proposed in relation to complaint handling policies. In particular, the establishment of an organisational culture that encourages reporting and the active engagement with and listening to children are critical factors for effective responses.

We would suggest that limitations of 'codes of conduct' should be acknowledged. The identified 'concerning behaviours' in section 4.4 on page 22 reflecting a somewhat crude characterisation of conduct, some of which at least, in isolation, may be beneficial and worthy of encouragement. For example, the inclusion of 'providing special tutoring to a child' and simply 'tutoring' itself as a 'concerning behaviour' is the antithesis of good teaching practice aimed at identifying and addressing individual student needs.

Similarly, characterising the broad range of situations which could be described as 'giving a child a lift home' as 'concerning' ignores the reality of a school community where a multitude of different and overlapping relationships may exist. A teacher may also be a family friend, fellow church member, be involved in a local sporting or community groups at which students are also involved, or simply be the parent of another child in the same class. The circumstances under which a child is provided with transport home can also vary widely. There is a demonstrable difference, for example, between the situation of a child alone in a vehicle with an adult and that where the child is one of a number of children, who may be family and their friends, travelling in a vehicle together.

We understand the challenges of identifying 'grooming' behaviours. While hindsight suggests that these behaviours may precede a complaint in many other cases they would not. In the majority of circumstances, they pass unnoticed as part of the normal, healthy, interactions within a community.

Appreciating that the focus is on ensuring the highest standards of protection for vulnerable children we are not suggesting that such behaviours be completely ignored. Our recommendation is, at least, that slightly more qualified language, such as '*potentially* concerning behaviours' is used.

Our preferred approach would be providing greater clarity at a local level around defining appropriate professional boundaries which focus more on principles and strategies for situations rather than a 'checklist' of examples. Scenario based training seeking to instil a clear decision making framework

for professional conduct we suggest provides an environment where actions can be discussed and analysed more effectively than by the application of a rigid code.

Oversight of complaints handling – reportable conduct schemes

As noted above, and included in our submission to Issues Paper 9, we support a national reportable conduct scheme based on NSW legislation with consistency across jurisdictions and the inclusion of Class and Kind agreements being key elements.

We outlined in our earlier submission that the teaching profession is relatively mobile, especially at the leadership level within non-government schools. Principals are often appointed from interstate and, while familiar with the educational aspects of schooling, the differences and nuances of compliance regimes can lead to misunderstanding of responsibilities and requirements. Some of the Case Studies by the Commission demonstrate that without clear leadership in addressing these issues within a school responses are likely to be unacceptable and not meet legislative requirements. Discontinuity between the approaches and requirements of different States and Territories is a significant contributor to these failings.

Advice and support for institutions

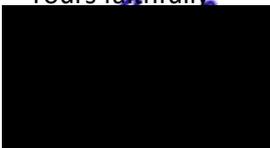
We share the Commission's concerns about the ability of smaller organisations to effectively undertake investigations internally. Regardless of any training that may have been undertaken, the infrequency of occurrence of complaints of this nature, while welcomed, does mean that staff and leadership in most small to medium sized organisations would have only limited experience in responding to complaints.

Given the 'high stakes' nature of these complaints the *Briginshaw Principle* developed by the High Court would require an equally high quality of response. In these circumstances achieving the required standard is very problematic. Although specialist outsourced providers can be contracted to undertake investigations the costs, sometimes reaching in excess of \$60,000, can be prohibitive. Even where such support can be used it is still incumbent upon the organisation to have the skills to make the final judgment and determination of a response.

Whether it took the form of a 'Legal Aid' type fund or an investigative branch of an oversight agency available at a subsidised cost there is a clear public benefit to the provision of support in these circumstances. Quite apart from the impact on the complainant and the individual community there are sound policy reasons to ensure that an accused person is not able to simply move to another organisation following an inadequate investigation. Nor would it be acceptable to create, effectively, a two tier system where larger organisations are able to conduct high quality investigations while perpetrators of abuse remain undetected in smaller organisations.

We look forward to the Commission's recommendations in this area. If you have any particular questions please contact myself or our Executive Officer, National Policy, Mark Spencer.

Yours faithfully,



Stephen O'Doherty

CEO