

22 April 2016

The Hon. Justice Peter McClellan AM  
Chair  
Royal Commission into Institutional Responses to Child Sexual Abuse  
GPO Box 5283  
Sydney NSW 2001

Emailed to: [response@childabuseroyalcommission.gov.au](mailto:response@childabuseroyalcommission.gov.au)

Dear Justice McClellan,

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

The Association of Heads of Independent Schools of Australia (AHISA) acknowledges the work of the Royal Commission in preparing the way for improved child protection policies and practices, including responses to complaints of child sexual abuse.

In responding to the Consultation Paper, AHISA affirms the value of the six principles described by the Commission to inform best 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
2. A child-focused complaint handling policy
3. A process that is clear and accessible to children and adults, and emphasises responsiveness and accountability
4. Protocols are in place for managing relationships and sharing information with other agencies
5. Training is provided about the complaint handling process
6. An ongoing audit process is in place.

In addition, AHISA provides comment on:

- A. Jurisdictional differences may undermine umbrella recommendations of best practice
- B. Responding to child-to-child sexual abuse
- C. Support mechanisms for independent schools
- D. Education of school leaders and governors

### **About AHISA**

The primary object of AHISA is to optimise the opportunity for the education and welfare of Australia's young people through the maintenance of collegiality and high standards of professional practice and conduct amongst its members.

The membership of AHISA Ltd comprises principals of 420 independent schools with a collective enrolment of some 426,000 students, representing 11.7 per cent of total Australian school enrolments and 20 per cent of Australia's total Year 12 enrolment. One in every five Australian Year 12 students has gained part of their education at an AHISA member's school.

Almost a third of AHISA members lead schools with boarding facilities, collectively providing for over 15,000 boarding students. Some 85 per cent of members' schools have an early learning centre.

AHISA's members lead a collective workforce of 36,460 teachers and 17,870 support staff.

### **A. Jurisdictional differences may undermine umbrella recommendations of best practice**

In its Consultation Paper, the Royal Commission notes that 'any attempt to define best practice in complaint handling should allow for tailoring to fit particular contexts and circumstances'. As the Commission is aware, different legislative regimes relating to child abuse and the reporting of child abuse apply in Australia's states and territories, and different government departments, agencies or services, including law enforcement authorities, will be involved in the reporting process. NSW also has a reportable conduct scheme in place.

While separate child protection legislation exists in the states and territories, high level principles for institutional responses should therefore in the first instance be viewed as having most value in informing the expectations and practices of state and territory governments and their agencies and the guidelines they then issue to the institutions operating within their jurisdictions.

This is not to say that nationally-based work is valuable only to state and territory governments and their agencies and not to individual institutions. The Royal Commission's issues papers and commissioned research papers have been welcomed by AHISA's members as valuable in informing the development of safe school protocols and practices. In the Consultation Paper, too, the points pertaining to suggested topics of a complaint handling policy and to codes of conduct, for example, are useful for schools. Rather, AHISA's point is that responses to complaints or suspicions of child sexual abuse must inevitably be guided by the legislation pertaining to schools within their jurisdiction.

As the legislation stands, state and territory governments and their agencies must therefore take the lead in providing the primary documentation to schools to guide their response protocols. Context specific guidelines for reporting are essential if teachers and school leaders are to have the confidence to both identify suspicious or reportable conduct and then apply the appropriate and/or mandated actions.

Specific guidelines for reporting also give school communities confidence that school leaders have acted appropriately in their reporting.

Context specific guidelines support the alignment of language in school documentation with state and territory government terminology and therefore help create a shared understanding of protocols, which further supports confidence in school-based decision making.

The risk of confusion around language and therefore any actions to be taken is high, as exemplified by the terminology used in the Consultation Paper.

In its Consultation Paper, the Royal Commission defines various terms, including the term 'investigation' and 'risk assessment' (pages 3-4), terms used by Ombudsman NSW in materials relating to the obligations of NSW institutions in relation to response to and reporting of child protection issues. However, 'risk assessment' is not included in the table of responses to complaints of child sexual abuse on page 5 of the Consultation Paper; instead the term 'assessment of a complaint' is used and defined in a way that a lay person could easily assume was an 'investigation'.

The Consultation Paper later describes a risk assessment process similar to that of Ombudsman NSW (page 18), but fails to distinguish between 'initial risk assessment' and 'ongoing risk assessment' as defined by the Ombudsman.

The Consultation Paper also notes that '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' (page 19) and even warns against taking steps to investigate the allegation if police are involved (page 23). This use of the term 'investigation' here appears at odds with the definition on page 3 of the Consultation Paper. This is further complicated by the recommendation that institutions use 'an impartial, objective and trained investigator' (page 28).

These are just two examples of the potential for confusion in both terminology and required/recommended action in establishing national best practice principles and describing their application. The terminology of one jurisdiction – or of a national framework – does not necessarily readily map on to mandated approaches in other jurisdictions.

Generic advice may similarly lead to confusion. For example, the value of the recommendations in the Consultation Paper on what to do if the police do not investigate or the police investigation does not result in a conviction (section 4.6, page 24), would be enhanced if the recommendations were confirmed on a state-by-state basis.

AHISA recognises that state and territory governments work with the federal government through the Council of Australian Governments (COAG) to achieve a national response on child protection issues, including the release of successive action plans under the National Framework for Protecting Australia's Children. However, while child protection laws, regulations and services remain state-based, the most useful documents for schools will be those that are specific to their jurisdiction.

## **B. Responding to child-to-child sexual abuse**

AHISA welcomes the Royal Commission's notice that it is 'doing more work on the prevention and treatment of child-to-child sexual abuse' (page 24).

A recent survey of its members undertaken by AHISA to inform its submission to the Senate inquiry into harm being done to Australian children through access to pornography on the Internet<sup>1</sup>, found that:

- 93 per cent of those surveyed agreed that sexualisation of children was occurring earlier
- 94 per cent believed digital technologies have increased the incidence of students sharing pornographic image or links to pornographic sites
- 75 per cent reported they had dealt with an issue of sexting involving students in the last three years.

As the Royal Commission points out in the Consultation Paper:

In schools, principals have a significant role in managing risks when allegations of sexual abuse by one child against another are made. 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... Training for principals should prepare them for managing these difficult situations. Principals also need to know who to contact for advice and assistance. (Page 51)

A further significant risk managed by principals is that of risk to the alleged abuser.

The role of principals is complicated by what some consider to be a 'time warp' between legislation in some states and territories and sexual behaviours of young people today. Sexting, for example, is considered by some young people to be an acceptable part of 'flirting', not a criminal act of child pornography or of using a carriage service to distribute child pornography.

AHISA's survey of members found that 93 per cent of members' schools specifically educate their students on the legal implications of sexting and posting or sharing pornographic images. Even so, given the finding that many principals are dealing with incidents of sexting, it is evident some principals will inevitably find themselves acting against the wishes of parents and the perceived long-term interests of their students while some state laws continue to condemn adolescents engaging in consensual acts as sex offenders or pornographers.

Sexualised behaviours and sexual assaults committed by primary-aged children are a further concern. The capacity of principals to ‘manage the media’ (page 30) and therefore protect the privacy of children and families involved is limited when parents are apt to express disgruntlement on social media platforms. In cases where principals are unable to fully inform their communities until the conclusion of an investigation by an outside agency, breakdowns in relationships between families in the school may not be able to be avoided and removal of one or more children may be the best possible outcome for the students, whether or not a complaint is substantiated.

AHISA members who lead schools in NSW have reported in conversation with AHISA’s CEO that one of the benefits of Ombudsman NSW is that there is a single government agency that can give authoritative advice to schools on all matters pertaining to their responsibilities for child protection, including in regard to how schools must interact with the police and other government agencies and departments. NSW members also noted the effectiveness of the way in which Ombudsman NSW works in concert with the Office of the Children’s Guardian in NSW.

### **C. Support mechanisms for independent schools**

The experience of AHISA’s NSW members suggests there is value for independent schools in a reportable conduct scheme such as that operating in NSW. School leaders want to ensure that the children in their care are safe; they are also aware that accountability to the wider community demands compliance with laws and regulations on all matters pertaining to schools, including reporting suspicions, concerns or complaints of sexual abuse. A ‘one-stop-shop’ providing authoritative advice and support would be extremely valuable to principals of independent schools, who have oversight of all aspects of child protection in their schools.

As well as telephone contact providing advice when an incident occurs, a single agency with responsibility for coordinating action between the various government departments, agencies or authorities involved in a reporting procedure is well positioned to produce specific guidelines for institutions such as independent schools. For example, the NSW Ombudsman’s Office produces a range of fact sheets that are helpful to schools in meeting their obligations for child protection, including:

- Defining reportable conduct
- Responsibility of the head of an agency (eg the principal of a school)
- A self-assessment checklist to review child protection policies
- Risk management after an allegation

Schools – and principals – are left in no doubt of the meaning of terms, their obligations or the actions they must take. Further support is provided in the form of a Mandatory Reporter Guide, which uses ‘decision trees’ to guide reporting. The ‘decision tree’ format is particularly useful for setting out in a clear and easily understood way what must be reported, when it must be reported and to whom.

In its Consultation Paper, the Royal Commission notes that ‘smaller institutions ... 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.’ Certainly a reportable conduct scheme that allows for a central agency to provide advice and support in meeting reporting obligations would benefit independent schools.

In regard to conducting an investigation, some independent schools may need forms of advice beyond the capacity of a central reporting conduct agency (such as the NSW Ombudsman) to deliver, given the likely intersection of an investigation of an employee with employment contracts and Fair Work legislation. In such instances, the Associations of Independent Schools in each state and territory could offer advice and assistance to member schools.

In its 2006 report, *Improving responses to allegations involving sexual assault*, Ombudsman Victoria notes that in the inquiry informing its report the capacity of principals to conduct investigations of sexual assault between students had been ‘raised as an issue’:

Also raised was the potential conflict of interest between principals’ investigative role and their responsibility for the welfare of the alleged victim, alleged perpetrator and school community generally. (Page 19)

Ombudsman Victoria refers to the practice in the Catholic school system of appointing independent investigators ‘to respond to allegations rather than it being a responsibility of principals’.

AHISA is not aware of cases among its members’ schools where independent investigators were necessary to satisfactorily resolve a complaint. However, should a principal deem appointment of an independent investigator necessary, again, Associations of Independent Schools in each state and territory would be well positioned to recommend suitable professionals. Alternatively, the agency with carriage of a reportable conduct scheme, such as Ombudsman NSW, could keep a register of recommended professionals.

#### **D. Education of school leaders and governors**

In its Consultation Paper, the Royal Commission suggests (pages 30-31) that 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.

*Response to Consultation Paper – Best Practice Principles, page 7*

In independent schools, it is the responsibility of the school board or council to approve all school policies and have in place a mechanism to ensure compliance with policies. As in other organisations, compliance to or application of policies approved by the board in independent schools is most often tracked by making it a reporting function of the principal/CEO, either as a direct report to the board or possibly via a sub-committee of the board, such as an Audit & Risk Committee.

It would be unusual to require members of a board to train in managing relationships with outside agencies or providing support for children, staff members and parents, any more than it is a requirement of members of boards of independent schools to have training in teaching. However, in the same way that board members are advised of their legal and fiduciary responsibilities, it would be useful for independent schools to have an information sheet on the specific obligations of the school and members of the board in relation to child protection and reporting of child abuse – including offences relating to failures to report – and for information about child protection to be included in the induction process for new board members.

AHISA sees a role for an agency responsible for a reporting conduct scheme, such as Ombudsman NSW, in producing and providing to schools information materials, policy and code of conduct templates and information for parents. Information suitable for children of different ages that could be distributed by schools or made available to school counsellors or in school information centres would also be useful.

Of particular import for principals would be jurisdiction-specific information on conducting the investigation of a complaint. Ombudsman NSW, for example, makes available a fact sheet (No 4) on 'Planning and conducting an investigation'. With such a guide, principals would be better placed to decide whether an independent investigator was required or whether the school could satisfactorily complete an investigation using its own resources.

In the report, *Improving responses to allegations involving sexual assault*, Ombudsman Victoria notes a statement from the Victorian Department of Justice in relation to the investigation of the complaint of sexual assault between students, that:

To determine if an alleged sexual offence has taken place and whether police should be notified, the principal or designated officer within a school requires skills and training so that the manner in which enquiries are conducted does not jeopardise any future criminal justice proceedings. (Page 19)

Clearly, the issue of investigations is a complex one for principals, requiring expert knowledge for which training could be a desired option.

Information of a more generic nature that would prove useful for schools (and which therefore could be developed or commissioned by a national body such as COAG) would be information developed specifically for teachers on how to encourage students to speak out about behaviour that makes them uncomfortable.

*Response to Consultation Paper – Best Practice Principles, page 8*

As noted in the Royal Commission's research report, *Taking us seriously*, there is a tension between 'how to help children and young people build the knowledge and skills to protect themselves without sending a message to children that they are primarily responsible for keeping themselves safe' (page 70). There is also a tension in school environments between educating children about what constitutes abusive behaviours and giving them the confidence to speak out when they see or experience such behaviours on the one hand, and on the other hand increasing their fear and mistrust. Information sheets, lesson outlines, classroom resources and illustrations of practice on how to educate students on protection and safety issues – and possibly developed as a video-based module for in-school professional development – would be of benefit to teachers and schools. Such material would be most valuable if it targeted the teaching of specific age groups, such as pre-Kindergarten, K-Year 2, Years 3-6 and Years 7-9.

AHISA recognises the pivotal role of the principal in creating a child safe school. As a professional association of Heads of independent schools, AHISA wishes to assist its members to achieve excellence in all aspects of school leadership. We commend the work of the Royal Commission in expanding the knowledge base on child protection measures and national awareness of its importance.

AHISA would welcome further inquiry on this submission.

Yours sincerely,

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AHISA National Chair 2015-17  
Principal of St Aidan's Anglican Girls' School, Qld

Further inquiries may be addressed to Ms Beth Blackwood, AHISA CEO, at AHISA's National Office, telephone 02 6247 7300, email [Beth.Blackwood@ahisa.edu.au](mailto:Beth.Blackwood@ahisa.edu.au).

#### **NOTE**

<sup>1</sup> AHISA (2016) Submission to the Senate Inquiry into Harm Being Done to Australian Children Through Access to Pornography on the Internet; available at <http://www.ahisa.edu.au/wp-content/uploads/2016/03/AHISA-Submission-Harm-to-children-10March2016.pdf>