



Submission to Royal Commission into institutional responses to child abuse – Issues Paper No. 3 Child Safe Institutions

**From the
Victorian Catholic Schools Parent Body (VCSPB)
10 October 2013**

The Victorian Catholic Schools' Parent Body (VCSPB) welcomes the opportunity to contribute to the Royal Commission into Institutional responses to Child Sex Abuse Issues Paper No. 3 Child Safe Institutions.

The VCSPB represents parents of students in Victorian Catholic schools at diocesan, state and national levels, through school boards, or where none exist, through school based parent support groups.

The VCSPB supports the work of the Victorian Catholic education authorities in advancing the interests of Catholic schools and their students, particularly in those areas where parent input can strengthen the quality of Catholic school provision.

The VCSPB's comments address issues relating to children in schools, at anytime including before school and after school, that are important to Catholic school parents and seeks to highlight parents' perspectives on these. The VCSPB speaks from a perspective of parents who value education in the Catholic faith and tradition for their children, but also as interested citizens.

Throughout this document we have used the term "*parent*", this term is used to include natural, adoptive or foster parents, guardians and caregivers of students.

VCSPB supports the Truth Justice Healing Council (TJHC) statement that child related organisations need to recognise that child safety is integral to everything that they do, and that they should implement best practice despite the cost implications.

Empowerment of children and parents to speak and to be heard is vitally important for the success of any child safety system and VCSPB is supportive of initiatives, school policies, procedures and processes together with skills development that make this a reality.

Issue 1 The essential elements of establishing a 'child safe organisation' that protects children from sexual abuse in an institutional context. In particular, are there core strategies that should be present and others that are less critical?

VCSPB believes that the essential elements need to

1. address and enliven Christ's teachings, meet Australia's international (UN Convention on the Rights of the Child) and national obligations (e.g. [The National Schools Framework](#))
2. where possible be evidence based
3. learn from the experience in Australia and overseas



4. be reviewed in light of on-going research in Australia and overseas
5. ensure the parent and child's voices are heard in the development of frameworks, policies, procedures and processes to establish and maintain 'child safe organisations'; this should be done with a real commitment by the organisation to listen and implement suggestions and changes made by parents and children
6. acknowledge that there is always a risk to the vulnerable especially children and each organisation needs to keep at its core the need to be a 'child safe organisation' without the work to this end becoming institutionalised and just in name providing false hope or sense of comfort to parents, children and the community
7. be visible, enacted and modelled in all organisations and at all levels of the organisation
8. all child centred organisations should engender an open culture where children and staff are able to offer constructive criticism without fear of retribution and knowing that their concerns will be listened to and acted upon
9. ensure a commitment to child safety and the rights of the child that is modelled from the top down, accountability by all and effective investigation processes that are not so cumbersome and formal that they are never used
10. embed continuous assessment and improvement as absolutely critical. There should be acknowledgement that from time to time things will go wrong in all organisations and a child will be exposed to a risk. However, the important issues are that the organisation has a system in place to make it safe and that once a risk was exposed immediate steps were taken to eliminate the risk, to protect the child, to deal with the perpetrator and to review processes to ensure that it could not happen again. Subject to maintaining confidentiality to protect the child, the processes should be transparent and the perpetrator should not be protected in any way.
11. include a Child Protection Policy. It should be clear to all organisations that the adoption of the policy is step one and an effective policy is one that is implemented, widely promulgated and whose key principles are modelled from the top down.
12. work in with the submission made on Working with Children Checks (WWCC) by the THJC on 12 August 2013. Please refer the suggestions of the VCSPB with regards to WWCC at page 6 below, Issue 9 Other Issues.
13. place restrictions with respect to schools, preschools, out of school care imposed on staff "*friending*" or "*following*" children within their care or with a reasonable period of time of them being in their care. This creates a risk to the child, but also helps create parameters and boundaries on those relationships for all staff particularly young or inexperienced staff.
14. treat as misconduct and in serious breaches serious misconduct with summary dismissal violations of codes or policies. Legislative effect may be needed to avoid unfair dismissal claims or to provide employers with a valid defence in appropriate circumstances. If there are settlement arrangements made with offending employees, it should be prohibited by legislation for those arrangements to protect the employee from criminal proceedings or from limited confidential disclosures being made with respect to the nature of the offence. That is, the employer should always be permitted to explain the reason for termination to prospective employers of the perpetrator without fear of being sued. If this is not put in place then there is a significant risk of other children being exposed to the same risk.



15. include investigation processes that protect children, but also staff who may be falsely accused of misconduct. This is an area of critical importance. It is VCSPB's view that every allegation should be investigated no matter how trivial it may seem and even if the child or parent withdraws the allegation. There should be a basic principle that once an organisation has knowledge of a possible issue that it must act. This principle will allow organisations to ascertain whether there is a problem or potential problem with a staff or volunteer. There may be a series of minor issues that do not in themselves amount to misconduct, but demonstrate a dangerous pattern of behaviour that needs to be addressed. Investigation should be conducted by independent bodies who are not connected with the organisation. The process for making a complaint should not be intimidating for children or their families. The use of contact officers should be explored. Contact Officers should be people throughout the organisation at all levels who can provide practical assistance and support to children and families in making their complaint.
16. include external monitoring and audit as critical to the maintenance and integrity of the system.
17. The referral of concerns and complaints to the Police should be in all cases.
18. It is best to explicitly include in all relevant documentation a reference to the first step, which is to immediately remove the child from potential, perceived, complained of harm.

Issue 2 The evidence base for the range of strategies associated with making an organisation child safe. Does this evidence base extend to the physical environment?

The VCSPB supports the

- making of the physical environment safer for the child and more “risky” for the offender.
- strategies, policies and procedures that minimise the opportunities for abuse.

Issue 3 How should the effectiveness of child safe strategies be tested?

The VCSPB believes there should be

- systemic, mandatory record keeping and documentation
- child safety be made part of the risk management strategy of schools with external compliance testing and auditing
- on-going professional learning and development for all staff and volunteers in all child related organisations ensuring an awareness, understanding and implementation of policies, protocols and procedures and a building of a child safe culture in the organisation
- registration requirements linked to the child safe framework and environment for teachers through Victorian Institute of Teaching (VIT)
- school policies, procedures and processes together with skills development for children and parents that make a reality that the child and parent voices are heard and listened to
- regular checks with parents and children in organisations by the organisation and the regulators e.g. schools, that they are aware of and understand the relevant policies, protocols and procedures, and that a child safety culture is visible.



Issue 4 How child safe policies and procedures work in practice

The VCSPB supports a national consistent comprehensive framework with a national regulator for a national accreditation scheme.

The VCSPB supports that there should be nationally based standards for child safe organisations supported by an accreditation scheme and that these should be compulsory not voluntary codes.

The VCSPB supports the practice of systemically collecting and analysing data of child sexual abuse needs to be adopted across all organisations in Australia that engage with children and that there should be a national database to inform the development of child safe practices.

Issue 5 Should there be a universal framework for a ‘child safe organisation’ or should strategies be specifically tailored to particular types of institutional settings?

The VCSPB supports a three level implementation for a child safe framework:

- universal principles (refer Issue 1 of this submission) that need to be applied and be evident in the activities of all organisations in contact with children
- guidelines and standards to assist organisational leaders, staff and volunteers in their application
- customisation to enhance the universal principles, guidelines and standards within individual organisations

The VCSPB would suggest that the child safe framework and environment be linked to the compliance requirements of the Victorian Registrations and Qualifications Authority (VRQA).

Issue 6 The role of staff performance management systems and disciplinary processes in a ‘child safe organisation’

Sexual offenders and anyone who have been abusive to children should never be employed, or hold any role, or be allowed to volunteer in a child related organisation.

The VCSPB consistent with the Gospel values, advocates for victims along with any individuals involved in cases of allegations, seeking and obtaining support from the Church. Under no circumstances should a perpetrator or offender’s approach to the Church prevent, obstruct or delay legislative/reporting obligations and any related organisational HR/misconduct policy inquiries that accord with relevant state and federal laws. The wellbeing and safety of the child (any potential children who may come into contact with a perpetrator) must be of paramount importance at all times.

Additionally, while having regard for relevant laws and policy addressing areas such as alleged misconduct and unfair dismissal, investigation/disciplinary processes should reflect extreme caution and care when it comes to ongoing employment or volunteer situations that involve interaction with children.

Sexual offenders and those with questionable backgrounds (by this term we mean those who have patterns of behaviour that demonstrate that they present a risk to children) should not be employed, hold any role or allowed to volunteer in a child related organisation.



The VCSPB contributed to and supports the TJHC submission dated 12 August 2013 on Issues Paper 1: Working with Children Check (WWCC). See also page 6 Item 9 Other Issues WWCC below.

Issue 7 The role and characteristics of governance and management leadership in creating and maintaining a ‘child safe organisation’ culture

A legislative approach is preferred.

The VCSPB supports disciplinary procedures and employment obligations linked to child safe policies.

The VCSPB notes that if child safe policies were given legislative effect, this could provide a valid reason in dismissal cases under the *Fair Work Act 2009* provided that the organisation in reaching its decision complied with the principles of natural justice and procedural requirement of the *Fair Work Act 2009* (Section 387) .

The VCSPB supports legislation that would extend liability personally to those in control of governance where child safe practices have not been implemented. This sends a clear message to organisations that this is a serious matter and that there are personal consequences for breach. This type of extension already applies in a number of corporate areas such as OHS, tax evasion and failure to comply with awards and other industrial instruments

Organisational leaders need to influence, ensure and monitor organisation-wide child safe, strategies, policies, procedures, skills development, awareness and implementation.

Issue 8 Should there be any additional enforceable requirements for institutions or particular institutions to maintain a child safe environment

The VCSPB supports

- a nationally consistent WWCC (see also page 6 Issue 9 Other Issues below)
- a regulatory body
- review of police procedure and protocol for a consistent approach to concerns and complaints brought to their attention.

The VCSPB supports the imperative for consistency in how police handle these cases and for existing protocols to be reviewed now and at regular intervals.

Issue 9 Other issues

The VCSPB supports the THJC view that comprehensive consideration needs to be given to three further issues:

- application of child safety principles and strategies in indigenous communities and services supporting the communities, with any necessary customisation
- mirroring of child safety principles and strategies in all sectors for example the disability sector
- the acknowledgement and addressing of the possibility of sexual abuse of children by peers



- **WWCC:**

The VCSPB seeks a WWCC that is national. However, whether national or state and territory-based, WWCC needs to be consistent, integrated and thorough. WWCC requires organisations to work together to share relevant information and to maximise the contribution the WWCC makes to the overall system of child protection in Australia. The risk of a person, in our context a range of school personnel, volunteers and providers, falling through the gaps is too great. If WWCC is to be a state and territory-based system, there must be access to each others information so that a name search may reveal relevant information.

As a parent body, we support this system applying to anyone who has reasonable contact with children. This has to include employees (professional and administrative), contractors (such as maintenance contractors), clergy, counsellors, parents, volunteers and anyone who can become familiar with children to the extent that children might form a trust bond with them or whose contact may be indirect particularly if they are acquiring personal information about a child.

Parents and volunteers should not be exempted.

The sharing of intelligence across Australia is crucial to maximising the benefits of the WWCC. The requirements with respect to reporting and collating all forms of intelligence should apply equally to volunteers.

Apart from criminal records and relevant employment/disciplinary proceedings – specific mention should be made to any dismissal on stated relevant grounds be included. This is of great importance to protect children and to ensure that organisations are making an informed decision about such matters.

In making the following two suggestions, we are cognisant of the complex issues including privacy, civil liberties and intersection with other legislation, having to be balanced with the great need to protect our children, prior to the suggestions being operationalised.

We would suggest a list of reportable behaviours include "grooming" and leaving employment or volunteering "under a cloud", particularly if it is in circumstances where it seems likely that it was to avoid investigation. It is appreciated that you have to be able to draw the line somewhere but there are particular aspects of grooming that can be identified. Other behaviours such as patterns of complaints of inappropriate conduct where the claim might be withdrawn etc. should also be recorded but perhaps given less weight than say a conviction or a dismissal. If a person is the subject of many disciplinary hearings but not found 'guilty' this is also relevant background material. Other behaviour might be moving in with a student on the day after they leave school or within a reasonably short period of time. This is an indication of some form of prior activity. Again it may be that this type of information is given less weight and that the regulatory body may form the view that in the absence of other indicators this evidence should not be shared, but it should form part of the factual matrix that is considered by the regulator.



It is suggested an organisation be required to advise WWCC within 14 days when a worker who has been identified as a risk leaves their employment; this should also apply to volunteers.

All reporting should be mandatory reporting. The removal of discretion for the organisation relieves the burden of reporting as the organisation can say that they had no choice.

Include the ability to have overseas offences (adult and juvenile) to be obtained by WWCC and be part of the check features.

As WWCC are a primary protective measure only, and any future efforts in schools on this front need to be closely aligned with increased ongoing awareness/training among all schools staff on Mandatory Reporting and protecting children.

If there is no national scheme, there should be minimum requirements for each state and territory scheme of the highest standard possible, but also that it is easy for workers/volunteers and employers to comply with to ensure that there is real compliance. The aim should be for effective voluntary compliance rather than having to rely upon policing the system.

Consideration may be given to whether organisations refusing to employ or take on a volunteer based upon information received from WWCC should be granted immunity against litigation so as to encourage compliance.

Definitions of child related work and child related workplaces should explicitly state that they are not limited to paid work. The focus should be on the access to children as opposed to whether a person is paid or not.

The VCSPB acknowledges the importance of the work of The Truth Justice and Healing Council and the Royal Commission into Institutional responses to Child Sex Abuse.

Tracey O'Neill
CHAIR