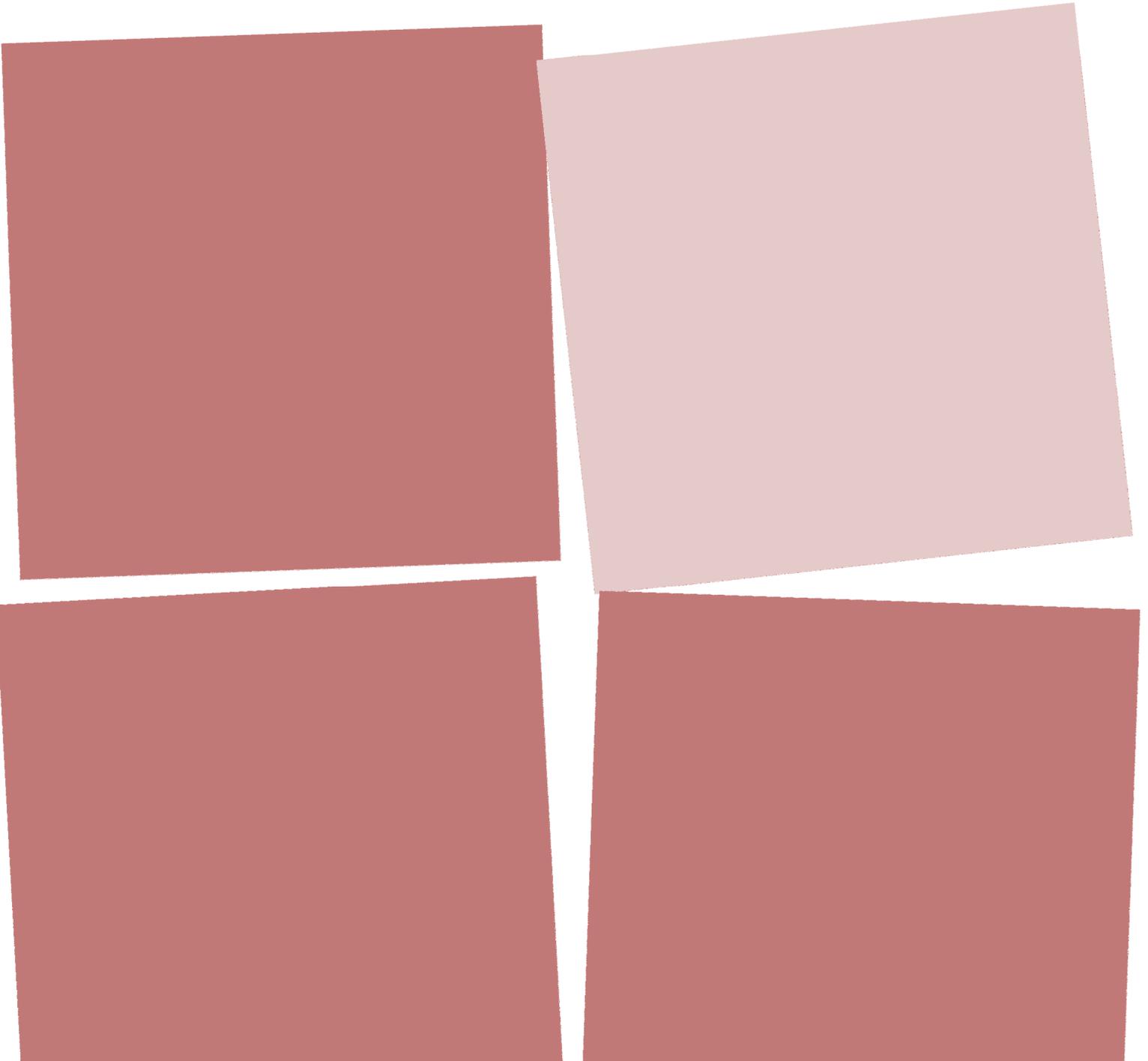




Education
and Training

Royal Commission into Institutional Responses to Child Sexual Abuse – Issues Paper 9

State of Victoria Response



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1. Introduction – Victoria’s approach to the risk of child sexual abuse in schools

1.1. Introduction and Overview

The Victorian Government welcomes this opportunity to make a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) in response to Issues Paper 9 *Addressing the Risk of Child Sexual Abuse in Primary and Secondary Schools*.

The Victorian Government is committed to Victoria as the Education State, with a school system that equips every student with the knowledge, skills and attitudes that will see them thrive. The pursuit of excellence and opportunity in education not only means providing access to the highest quality teaching and learning — it also means keeping children and young people safe at school, investing in their wellbeing and supporting them to be happy, confident and resilient. The Education State reform agenda targets additional resources to schools in need, ensuring every child has access to a school that is safe, clean, fit-for-purpose, and which provides a positive climate for learning.

The Victorian Government is following the work of the Royal Commission closely as we work to respond to the report of the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, entitled ‘Betrayal of Trust’ (the Betrayal of Trust Report).

The Victorian Government’s vital work on child safety reform will take into account the findings and recommendations of this Royal Commission, as well as those of the Victorian Royal Commission into Family Violence.

Through the work of the Royal Commission into Family Violence, we have heard about the impact of violence and abuse on the development of children and young people, and its profound lifelong effects.

As universal services, schools are well placed to identify and report suspected child abuse and/or neglect that may have occurred outside the school context, such as in another institution or in the home.

There are strong protections for children already in place in Victorian schools. This submission discusses the Victorian Government’s vision for the future, in particular work being done in response to the Betrayal of Trust Report, as well as current policies, procedures and laws that aim to keep Victorian children safe from the risk of child sexual abuse. It should be read in conjunction with the Victorian Government’s response to the Royal Commission’s Issues Paper 3 – Child Safe Institutions, which it draws upon and updates where necessary.

2. Victoria's response to *Betrayal of Trust*

2.1. Overview of Betrayal of Trust

On 13 November 2013, the Family and Community Development Committee of the Victorian Parliament completed its Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations (Inquiry). The Inquiry examined the processes by which religious and other non-government organisations respond to the abuse of children by personnel within their organisations, and found that there was a serious incidence of abuse in many of these organisations.

The Inquiry's Betrayal of Trust Report, made 15 recommendations that focus on five broad areas:

1. Reforming criminal law
2. Preventing criminal child abuse in organisations
3. Monitoring responses by organisations to criminal child abuse
4. Creating an independent, alternative avenue for justice and
5. Improving access to civil litigation.

The Victorian Government supports the recommendations made by the Betrayal of Trust Report. It has already implemented a number of recommendations and work is continuing to implement those that remain outstanding.

2.2. Child Safe Standards

The Betrayal of Trust Report found that while the majority of children are safe in organisations, there are inadequate and inconsistent approaches to child safety in child related organisations across Victoria.

Amongst its recommendations for preventing child abuse in organisations, the Betrayal of Trust Report recommended that Victoria should introduce minimum standards for ensuring organisations that have direct and regular contact with children are child safe.

The Betrayal of Trust Report recommended (recommendation 12.1) that this could be achieved through the government reviewing its contractual and funding arrangements with education and community service organisations that work with children, to ensure minimum standards for a child safe environment. The report further recommended that the government consider extending the standards for child safe environments to other organisations or sectors that have direct and regular contact with children.

The Betrayal of Trust Report considered the systems and processes that organisations should have in place to prevent and respond to child abuse, and identified the following key elements of child safe standards:

- effective selection of suitable personnel, including screening checks and balances to prevent offenders accessing organisations
- management of situational and environmental risk, including policies for preventing abuse by existing staff and
- creation and promotion of child safe cultures in organisations.

The Betrayal of Trust Report also recommended (recommendations 13.1 and 13.2) that the government should:

- support peak bodies to build capacity to prevent child abuse in organisations, especially smaller organisations that interact with children and

- ensure non-government organisations are equipped with high quality information about the prevention of child abuse.

In response to these recommendations the Victorian Government is developing minimum child safe standards for organisations working with children, including schools, and supporting organisations to meet the standards.

The proposed child safe standards will aim to drive cultural change in organisations so that protecting children from abuse is embedded in everyday thinking and practice. It is also intended these standards will address the inconsistency in child safety approaches in organisations across Victoria that was identified by the Betrayal of Trust Report.

A consultation paper with draft standards was developed to inform consultation with key stakeholders. The development of the draft child safe standards was informed by existing 'child safety schemes' in Queensland,¹ South Australia,² New South Wales³ and the National Framework for Creating Safe Environments for Children⁴ as well as findings by and submissions to the Royal Commission about child safe institutions.⁵

Relevant stakeholders were consulted between August 2014 and early 2015 on the child safe standards and the proposed approach to introducing them. This consultation was to inform the content of the standards, which organisations will be in scope and how organisations can be supported to meet the standards.

It is likely that the proposed compulsory standards would require organisations to have the following measures in place:

- strategies to embed an organisational culture of child safety
- a child safe policy or statement of commitment to child safety
- a code of conduct that establishes clear expectations for appropriate behaviour
- human resources policies and practices (from recruitment through to ongoing supervision arrangements and disciplinary procedures) that reduce the risk of harm to children by new and existing personnel, including through undertaking Working with Children Checks (WWC Checks), training and support for staff and volunteers and performance management
- processes for responding to and reporting suspected child abuse
- a risk management approach and
- mechanisms to promote the participation and empowerment of children.

It is likely that each of the child safe standards would incorporate the following principles:

- promoting the cultural safety of Aboriginal children⁶
- promoting the cultural safety of children from culturally and/or linguistically diverse backgrounds and
- promoting the safety of children with a disability.

It is intended that the standards would be non-prescriptive to allow the diverse range of organisations in scope flexibility in how they meet the requirements. Under the standards,

¹ <https://www.bluecard.qld.gov.au/risk-management.html>

² <http://www.families.sa.gov.au/pages/protectingchildren/CreatingCSE/>

³ <http://www.kidsguardian.nsw.gov.au/working-with-children/become-a-childsafe-organisation>

⁴ A copy is available for download via the following link:
http://www.cyp.vic.gov.au/childsafetycommissioner/publications/childsafe_pubs.htm

⁵ For example, submissions about Issues Paper 3, Child Safe Institutions are available for download via the following link:

<http://www.childabuseroyalcommission.gov.au/submissions/309/issues-paper-3.-child-safe-institutions>

⁶ The term Aboriginal refers to both Aboriginal and Torres Strait Islander peoples.

organisations will be supported to strengthen their capacity to prevent and respond to child abuse, and ongoing improvement will remain a focus of the standards.

The Victorian Government is currently developing legislation to introduce the standards in 2016. It is proposed that the standards would be implemented in stages. It is intended that relevant early childhood and school organisations funded and regulated by the Department of Health and Human Services (DHHS) and the Department of Education and Training (DET), as well as the Departments themselves, will be subject to the standards in the first implementation phase. Education, awareness raising and building the capacity of organisations to create and maintain child safe environments will be the initial focus of the standards.

2.3. Child Safe Schools

The importance of having consistent minimum standards across all registered schools, including non-government schools, was a key theme of the Betrayal of Trust Report.

In anticipation of the introduction of the child safe standards the Victorian Government has taken steps through the introduction of the *Education and Training Reform Amendment (Child Safe Schools) Act 2015* (Child Safe Schools Act) to develop a framework for introducing the child safe standards in schools.

This will primarily be achieved by requiring registered schools to meet minimum standards that give effect to the child safe standards as a condition of registration.

Incorporating the child safe standards into the schools registration process achieves a number of related goals. These include ensuring that child safety sits as a core component of operation for schools; ensuring that the standards apply to all schools without exception and integrating the standards with existing health and safety registration requirements.

In a related recommendation (recommendation 16.1), the Betrayal of Trust Report recommended reviewing and updating the Victorian Government's policies and procedures for responding to child abuse,⁷ to ensure they cover all forms of abuse (including non-sexual abuse), and developing benchmarks and standards that can be extended to non-government schools. This recommendation is in alignment with the child safe standards, which are expected to include a requirement for all organisations to have procedures for managing and responding to allegations of abuse.

How the registration requirement will work

To register a school in Victoria, an individual or organisation must apply to the Victorian Registration and Qualifications Authority (VRQA) and satisfy minimum standards for registration established under section 4.3.1(6) of the *Education Training and Reform Act 2006* (Vic) (ETR Act). Existing registration standards are described below at 3.2.

A new section of the ETR Act,⁸ introduced by the Child Safe Schools Act, provides that the VRQA must not register a school unless it is satisfied:

‘the school has developed policies, procedures, measures and practices in accordance with a Ministerial Order for managing the risk of child abuse including—

⁷ Current procedures include *Responding to Allegations of Student Sexual Assault*; *Protecting the Safety and Wellbeing of Children and Young People*, the DHHS and DET Joint Protocol for *Protecting the safety and wellbeing of children and young people*; and child protection procedures contained in the online Schools Policy and Advisory Guide.

⁸ ETR Act, s 4.3.1(6)(d)

- (i) the implementation of minimum standards for a child safe environment; and
- (ii) responding to allegations of child abuse committed against a child enrolled at the school or committed by an employee or a student, contractor or volunteer of the school or other person connected with the school.'

For the purpose of the Ministerial Order, the definition of child abuse in the ETR Act extends beyond criminal child sexual abuse, to address physical violence, serious emotional or psychological harm or exploitation and serious neglect of a child. The broad definition of child abuse for the purposes of the ETR Act is informed by the Betrayal of Trust Report, which found that children subjected to criminal sexual abuse were often also subjected to physical and/or emotional abuse, or neglect.

The Ministerial Order is also intended to cover all forms of abuse committed against a child enrolled at the school (whether or not the abuse occurs at school) or involves any members of the school community. This framework recognises the multi-dimensional nature of child abuse, including the varied sites and situations where child abuse may occur and the important role schools play in recognising, reporting and supporting children who experience abuse.

The power for the Minister for Education to make the above-mentioned Ministerial Order is yet to be proclaimed by the Victorian Governor.

What schools will be required to do

The Ministerial Order will require all registered schools to take specified actions that will include compliance with the child safe standards described above, at section 2.2.

Many registered schools will have existing policies and procedures that are sufficient to comply with most or all of the proposed child safe standards. They may only require small adjustments to promote consistency with the minimum standards across all registered schools.

Where appropriate, the implementation of the minimum standards will be accompanied by resources to support schools to self-assess against the standards and assist them to develop policies and procedures that are suitable for the particular school environment and comply with the minimum registration requirement.

It is proposed that the implementation of these standards will be guided by the principle of inclusion, particularly focusing cultural safety for Aboriginal children and children from culturally and linguistically diverse backgrounds, and safety for children with disabilities.

2.4. Reportable Conduct scheme

The Betrayal of Trust Report made a number of findings in relation to how allegations of child abuse in organisations are responded to, monitored and overseen. In particular, the Betrayal of Trust Report considered that independent scrutiny and oversight was required to avoid organisations protecting suspected abusers and to ensure disclosures are appropriately acted upon.

The Betrayal of Trust Report considered the New South Wales (NSW) 'reportable conduct' scheme, which has been operating since 1999. Under the NSW scheme:

- certain organisations are required to report allegations of abuse by employees and other adults engaged by the organisation to the NSW Ombudsman and
- the NSW Ombudsman oversees the handling and investigation of allegations and passes on information to the Office of the Children's Guardian for WWC Check reassessment.

The Betrayal of Trust Report recommended that all relevant Victorian Government and non-government organisations should report allegations of misconduct relating to children to a central location, with certain findings taken into account when assessing or reassessing an individual's eligibility to hold a WWC Check. The Betrayal of Trust Report also recommended that the Victorian Government authorise an independent statutory body to:

- oversee and monitor the handling of allegations of child abuse by relevant government, religious and non-government organisations
- scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse
- monitor and report on trends associated with allegations and
- build the capacity of relevant government and non-government organisations to competently handle allegations of suspected child abuse.

Consistent with the Betrayal of Trust Report recommendations, the Victorian Government is developing a reportable conduct scheme, which may be similar to the scheme in NSW.

A proposed scheme will require centralised reporting of abuse allegations to an oversight body by organisations with a high level of responsibility for children, including schools.

Under a proposed scheme, an oversight body may undertake a range of functions to 'keep under scrutiny' child safety systems of relevant organisations, including:

- referring certain findings to the WWC Check Unit in the Department of Justice and Regulation, triggering a reassessment of WWC Check eligibility
- sharing information with key organisations where appropriate to ensure child safety and wellbeing and
- assisting in building the capacity of organisations to respond to allegations of abuse.

The proposed design of the scheme will build on existing requirements including Victorian and national employee misconduct, professional registration (for example, this may include teacher registration with the Victorian Institute of Teaching) and reporting obligations (for example, this could include existing requirements in relation to misconduct or criminal offences by government school personnel under the ETR Act).⁹ The reportable conduct scheme would not interfere with reporting obligations to police or with police investigations.

2.5. Criminal law reforms

Three new criminal offences were introduced in response to the Betrayal of Trust Report. Introducing new criminal offences is an effective way to ensure that minimum obligations for child protection apply to all relevant individuals and organisations, including both government and non-government schools.

Two of the offences, 'failure to disclose' and 'failure to protect', make it clear that not only is it a serious criminal offence to abuse a child, but it is also a crime to fail to report child sexual abuse, or fail to protect a child from sexual abuse if a person knows or believes a child is at risk and they are in a position of authority.

It is also now a criminal offence to engage a child, or their parents or carers, in any communication intended to facilitate engaging the child in a sexual offence.

⁹ ETR Act, Division 10 of Part 2.4

Crimes Amendment (Grooming) Act 2014

The *Crimes Amendment (Grooming) Act 2014* introduced a new offence of grooming for sexual conduct with a child under the age of 16 years, which commenced on 9 April 2014.

The offence applies where an adult communicates, by words or conduct, with a child under the age of 16 years or with a person who has care, supervision or authority for the child with the intention of facilitating the child's involvement in sexual conduct, either with the groomer or another adult. The offence commenced on 14 April 2014, and has a maximum penalty of 10 years imprisonment.

The act of grooming does not necessarily involve any sexual activity or even a discussion of sexual activity. Under the offence, parents, carers or other family members who have been targeted by perpetrators in order to gain access to a child are also victims. For example, a school teacher may be found guilty of the offence if they establish a relationship with a student, or the parents of a student, for the purpose of facilitating sexual activity with the student at a later time.

In addition to the introduction of this offence, the *Victim's Charter Act 2006* was amended to expressly provide that a child and a family member of that child can be victims of a grooming offence and are entitled to provide a victim impact statement to a court.

Crimes Amendment (Protection of Children) Act 2014 – Failure to disclose and Failure to protect

The *Crimes Amendment (Protection of Children) Act 2014* introduced two new criminal offences to further protect children from abuse.

'Failure to disclose' offence

The first new offence, which commenced on 27 October 2014, relates to failing to disclose a sexual offence against a child under 16. This offence requires all Victorian adults to disclose to police, as soon as practicable, information that leads them to form a reasonable belief that another adult has committed a sexual offence against a child under 16 years, unless they have a reasonable excuse not to do so. The offence has a maximum penalty of three years imprisonment.

For example, if a teacher forms a reasonable belief that a student has become the victim of a sexual offence committed by an adult, that teacher must report the abuse to Victoria Police, unless there is a reasonable excuse for not doing so. The development of a reasonable belief does not need to occur through direct conversation with the child. For example, a 'reasonable belief' might be formed when:

- a child states that he or she has been sexually abused
- a child states that he or she knows someone who has been sexually abused (sometimes the child may be talking about himself or herself)
- someone who knows the child states that the child has been sexually abused
- professional observations of the child's behaviour or development leads a professional to form a belief that the child has been sexually abused
- signs of sexual abuse lead to a belief that the child has been sexually abused.

The Betrayal of Trust Report highlighted the importance of reporting child abuse to police, and found that reporting child sexual abuse should be a community-wide responsibility. Consequently, this offence imposes a clear legal duty upon all adults to report information about child sexual abuse to police, not just those within an organisational context.

The offence is also distinct from the mandatory reporting obligations under the *Children, Youth and Families Act 2005* (CYF Act), which requires certain professionals to report any

allegations or suspicions of physical and/or sexual abuse to DHHS. In contrast, the 'failure to disclose' offence can apply to any adult, and requires reporting to Victoria Police.

'Failure to protect' offence

The second offence, which commenced on 1 July 2015, relates to failing to protect a child from a risk of abuse. The offence applies where there is a substantial risk that a child under the age of 16 who is under the care, supervision or authority of a relevant organisation will become a victim of a sexual offence committed by an adult associated with that organisation. A person in a position of authority in the organisation will commit the offence if he or she knows of the risk of abuse and has the power or responsibility to reduce or remove the risk, but negligently fails to do so.

For example, if a principal at a secondary school knows that a teacher has developed an inappropriate relationship with a student, and fails to take appropriate action such as removing the teacher from a position where he or she has contact with students, investigating and taking appropriate disciplinary action, the principal is likely to be committing the offence. The offence has a maximum penalty of five years imprisonment.

The offence applies to people in authority within a 'relevant organisation', which is defined as an organisation that exercises care, supervision or authority over children, whether as part of its primary function or otherwise. This definition captures government and non-government schools, and other education and care services such as childcare centres, family day care services, kindergartens and outside school hour care services.

The Betrayal of Trust Report found that, historically, some organisations maintained a culture of non-disclosure, where the interest of the organisation or perpetrator was of primary concern instead of the protection of children. This offence will encourage organisations, including all Victorian schools, to actively manage the risks of sexual offences being committed against children in their care.

3. Current measures addressing the risk of child sexual abuse in Victorian schools

3.1. Addressing the risk of abuse in government and non-government schools

The Victorian Government's work in response to the Betrayal of Trust Report will strengthen our state-wide approach to the risk of child sexual abuse in all organisations that work with children, including both government and non-government schools.

There are already robust protections in place to address the risk of child abuse in Victorian schools.

The Victorian Government, through its statutory authorities, regulates and registers both government and non-government schools, as well as all Victorian teachers.

Under Victoria's school regulation framework, the same legislative obligations apply to government and non-government schools. In order to be registered, all schools must meet a range of minimum standards, including for the care, safety and welfare of students, as well as having policies and procedures to enable compliance.

The Victorian Government, through DET, is also responsible for providing government school services. A range of DET policies are in place to meet the minimum standards for school registration. These are discussed below at section 3.4, with a focus on policies that address the risk of child sexual abuse in government schools.

Although DET's Schools Policy Advisory Guide is publicly available to all schools, non-government schools are not required to apply policies developed by DET.

Non-government schools are able to develop their own policies in order to best support their local needs and individual school context. These policies must enable schools to meet the minimum standards for registration, including compliance with all relevant laws for the care safety and welfare of students, such as the common law duty of care, statutory mandatory reporting obligations, and criminal law obligations including those introduced in response to the Betrayal of Trust Report.

In addition, all Victorian teachers must be registered or granted permission to teach in order to undertake teaching duties in both government and non-government schools. The registration requirement aims to ensure that only suitable people are eligible to be employed as teachers across the entire Victorian education sector.

Victoria's teacher and school registration frameworks are discussed below at sections 3.2 and 3.3.

The Joint Protocol between DHHS, DET, and Victorian Catholic and Independent schools, titled *Protecting the safety and wellbeing of children and young people* (Joint Protocol)¹⁰ underpins a culture in which school employees have a duty of care to protect and preserve the safety, health and wellbeing of children and young people in their care and must always act in the best interests of those children and young people. If an employee has any concerns regarding the health, safety or wellbeing of a child or young person, they are expected to take immediate action.

¹⁰ http://www.dhs.vic.gov.au/data/assets/pdf_file/0018/527211/Protocol-DEECD-updated-2013.pdf

3.2. School registration

Every school in Victoria must be registered. The registration process aims to ensure that schools meet minimum standards for academic quality and student safety and wellbeing. School registration requirements also ensure that proprietors and persons responsible for the school's governance are fit and proper persons, and that schools are aware of their legal obligations towards students.

Victorian Registration and Qualifications Authority

Schools in Victoria are principally regulated under the ETR Act and the *Education and Training Reform Regulations 2007* (ETR Regulations). The ETR Act gives the VRQA the power to regulate both government and non-government schools. Under this power, the VRQA is responsible for registering all Victorian schools, ensuring that registered schools maintain minimum standards, accrediting courses and qualifications, protecting the interests of students as consumers in the delivery of accredited courses and qualifications, and keeping a register of schools and the year levels or curriculum programs they are authorised to deliver.

Minimum standards for registration

In order for a school to be registered by the VRQA, it must comply with the minimum standards for registration prescribed by the ETR Regulations.

The prescribed minimum standards for registration of a school are set out in Schedule 2 of the ETR Regulations. Several minimum standards are aimed at ensuring the safety of students, including:

- Minimum Standard 4, which provides that all teachers employed at a school must be registered or be granted permission to teach,¹¹ as well as comply with any conditions, limitations or restrictions of that registration or permission to teach
- Minimum Standard 5, which states that 'the requirements of the *Working with Children Act 2005* must be complied with in respect of the employment of all staff at a school'
- Minimum Standard 12, which states that 'a school must ensure that the care, safety and welfare of all students attending the school is in accordance with any applicable State or Commonwealth laws and all staff employed at the school are advised of their obligations under those laws'
- Minimum Standard 15, which states that 'the governance of a school must be structured to enable the school to fulfil its legal obligations' and that 'the proprietor, any member of the governing body, and any principal, of a non-government school:
 - 'must be of good character ... and must not have been found guilty of an offence which is, or which would if committed in Victoria be, an indictable offence'¹² and
 - 'if required under the *Working with Children Act 2005* to obtain an assessment notice under that Act to carry out any responsibilities in relation to the school, must not be in breach of any requirements of that Act'.¹³

The VRQA has prepared and published a *Guide to the minimum standards and other requirements for school registration* (the Guide). The Guide provides instructions and advice to schools about the evidence required to demonstrate compliance with the minimum standards for registration, including:

¹¹ Under the ETR Act, Part 2.6

¹² ETR Regulations, cl 15(2)(a) and (c)

¹³ ETR Regulations, cl 15(2)(g)

- keeping a register of teachers and staff to ensure that the school complies with the relevant teacher registration or WWC Check requirements
- evidence of policies and procedures relating to student welfare, bullying and harassment, complaints and grievances
- evidence of policies and procedures for the supervision of students, including when on-site, when taking part in off-site activities, and when learning with external providers and
- evidence of a mandatory reporting policy and procedures, and an accidents and incidents register.

The Guide also expands on the requirement that a school must provide evidence in the form of a completed Declaration of Good Character for each proprietor, member of the governing body and principal of a school. The intent of this requirement is to ensure that those governing a school are of good character and have the necessary skills, knowledge and experience to support the school's governing body to govern effectively.

Review procedures

The VRQA may arrange for a general or a specific review and evaluation of the operation of a registered school.

A general review can be conducted at any time to determine whether a school has attained and continues to attain the standards required for registration.¹⁴ A general review might also be conducted to determine whether or not a school has complied with a condition imposed by the VRQA on the school's registration.¹⁵

A specific review can be conducted to determine if a registered school has attained and continues to attain a particular minimum standard if the VRQA believes on reasonable grounds that:

- there are matters concerning the safety of students at the school which require urgent action to be taken by the school or
- exceptional circumstances exist at the school which justify a specific review being undertaken.¹⁶

The VRQA may rely on a report from a school representative or, in the case of a government school, from the Secretary of DET, in order to satisfy itself whether or not a school complies with the prescribed minimum standards for registration.¹⁷ The VRQA may also rely on 'a report of the conduct of a review and evaluation by a person or body approved by the Authority to review a school or group of schools'.¹⁸

Reviews of government, Catholic, and Seventh Day Adventist schools are conducted by 'review bodies' approved by the VRQA. To receive VRQA approval to operate as a review body, an entity must submit an application that demonstrates the entity meets certain requirements set out in VRQA's *Arrangements for Review Bodies*. One of these requirements is for the review body to provide an annual report to the VRQA on the compliance of the schools reviewed with the minimum standards. The Catholic Education Commission of Victoria, the Seventh Day Adventists and the Regional Services Group of DET have been established as approved Review Bodies responsible for ensuring the ongoing quality of their respective schools.

¹⁴ ETR Act, s 4.3.3(2)(a)

¹⁵ ETR Act, s 4.3.3(2)(b)

¹⁶ 'Exceptional circumstances' may include, but are not limited to, the school's serious or repeated non-compliance with a prescribed minimum standard for registration, see ETR Act, ss 4.3.3(2A) and (2B)

¹⁷ ETR Act, s 4.3.2

¹⁸ ETR Act, s 4.3.2(c)

Independent schools are reviewed directly by the VRQA. The VRQA also provides an independent complaints investigation service for families and the public in relation to independent schools and their compliance with the minimum standards. VRQA investigations routinely require a review of school policies and procedures, and a site assessment to assess how they are practically applied.

In 2014, the VRQA commenced 'hot reviews' of government schools to ensure the approach taken by DET's Regional Services Group to school reviews effectively integrated an assessment of the schools' compliance with the prescribed minimum standards. In 2015, this model of verifying the integrity of the quality assurance processes of review bodies was expanded to include school reviews by the Catholic Education Commission of Victoria and Seventh Day Adventist schools.

VRQA has developed, and published on its website, a 'School Self-Assessment Tool' which can be used by a school to help assess its level of compliance with the minimum standards and other requirements for school registration. This tool can be used by any school (government or non-government) to self-assess the school's compliance with the prescribed minimum standards.

DET also undertakes annual government school financial audits. These audits may also sample aspects of a school's compliance with the minimum standards. In 2013, a sample of schools was assessed against the student welfare requirements. This information is used by DET and the VRQA to assess levels of compliance and risk.

Information-sharing by VRQA

The VRQA has a broad power to disclose information it has obtained in the course of performing its functions or exercising its powers, to a prescribed person or body, if the information relates to the performance of a function of that person or body.¹⁹ The list of prescribed persons or body includes the Secretary to a Department, a public sector body, a municipal council, a registered body, a Department of the Commonwealth or of another State or Territory, and a Commonwealth agency.

The VRQA is also able to ask a prescribed person or body (such as a municipal council) to give the VRQA information that may assist the VRQA in determining whether or not a school complies with any of the minimum standards for registration of schools.²⁰

These information-sharing powers were strengthened with the proclamation of section 12(1) of the Child Safe Schools Act on 1 July 2015, enabling the VRQA to liaise more effectively with other government agencies when conducting reviews of registered schools.

Proposed child-safe schools amendment

As described in section 2.3 above, the Child Safe Schools Act includes a new power for the Minister for Education to make a Ministerial Order requiring schools to develop a framework for managing the risk of child abuse. The VRQA intends to support the introduction of child safe standards in schools with an intensive communications program, to assist schools to meet their obligations to maintain child safe environments and adopt preventative measures to minimise the risk of child abuse within schools.

¹⁹ ETR Act, s 4.9.4(1)

²⁰ ETR Act, s 4.9.4(1AAA)

Regulation of boarding school residences

The Betrayal of Trust Report and the Royal Commission have both raised concerns about institutional child abuse within boarding school residences. Boarding school residences are potentially high risk environments, where children and young people live under the care and supervision of adults who are not their parents/guardians and are often far from home. Cultural difference may also increase the potential vulnerability of international boarding students.

In Victoria, boarding school residences must comply with a number of Commonwealth and Victorian laws concerning building and essential services, food safety, privacy, as well as requirements for non-exempt employees and volunteers to apply for a WWC Check in accordance with the WWC Act.

However, the VRQA minimum standards for registration do not currently apply to the boarding school residences. Under the ETR Act, a 'school' is defined as 'a place at or from which *education* is provided to children of compulsory school age *during normal school hours* and does not specifically provide for the regulation of accommodation services.²¹

DET and VRQA are considering issues relating to child safety and boarding school residences, especially in the context of the development of the child safe standards.

3.3. Teacher registration

Teacher registration requirements are an important part of ensuring that individuals teaching in both government and non-government schools are fit and proper people to carry out teaching duties, and are aware of standards of professional conduct and their legal and ethical obligations towards students.

Victorian Institute of Teaching

The Victorian Institute of Teaching (the Institute) regulates teachers in Victoria. It uses a standards-based approach to fulfil its public protection function and minimise risks to Victorian children in schools and early childhood education and care services. The Institute's functions include registering teachers and ensuring they meet academic and suitability requirements to become a teacher, accrediting initial and continuing teacher education programs, standard setting, and professional discipline.

The Institute aims to protect children from sexual abuse by:

- ensuring that every person who is a registered teacher in Victoria is a suitable person and
- ensuring that registered teachers know their responsibilities with regard to their own conduct as a professional and their obligation to ensure the physical and mental welfare of those they teach.

Mandatory teacher registration and re-registration

All those undertaking the duties of a teacher in a Victorian primary, secondary or special school are required to hold registration. From 30 September 2015, all qualified professionals who are working in the role of an early childhood teacher must be registered.

It is an offence under the ETR Act for a person to teach in a school without holding registration. It is also an offence for a person or body to employ a person to teach in a school

²¹ ETR Act, s 1.1.3

without registration. This will also apply to early childhood teachers and employers from 30 September 2015.

Suitability requirements for registration

To be registered as a teacher, a person must meet academic requirements and standards of suitability. To meet suitability standards, a person must:

- have a current and satisfactory National Police History Check (National Check) and
- be mentally and physically able to teach.

The Institute uses the National Check for registration because, as recognised in a five-year review of the Institute, the National Check imposes a high standard for teachers and covers a broad range of offences.²² The Institute assesses each application for registration case by case. In the case of a declared health condition, the Institute will seek further information from a medical practitioner if required before determining the applicant's suitability to teach.

The Institute may register a teacher if there are no grounds under the ETR Act under which the Institute may refuse to grant registration.²³

Some of the grounds on which the Institute may refuse registration are:

- that the character of the applicant is such that it would not be in the public interest to allow the applicant to teach in a school²⁴
- that the applicant has been convicted or found guilty of a sexual offence or an indictable offence in Victoria or an equivalent offence in another jurisdiction²⁵
- that the applicant has been convicted or found guilty of an offence that is likely to compromise his or her ability to teach in a school, or where it is not in the public interest to allow the applicant to teach in a school because of the conviction or finding of guilt²⁶
- that the applicant has previously held a right to teach, or been employed as a teacher in another state or territory or in another country and has had that right to teach cancelled because of conduct which, if committed in Victoria, would have entitled the Institute to cancel or suspend the registration²⁷
- that the applicant has been seriously incompetent in their teaching practice while employed in another state, territory or country²⁸ and
- that the applicant has not produced evidence of his or her suitability to teach.²⁹

Ongoing checks on fitness

Once a teacher is registered they are subject to continuous criminal record checking. The Institute conducts a weekly 'wash' of registered teachers through Victoria Police, which identifies any Victorian charges or convictions.

²² FJ and JM King and Associates, Review of the Victorian Institute of Teaching (2008) p 11
<http://www.education.vic.gov.au/Documents/about/programs/archive/vitreview.pdf>

²³ ETR Act, s 2.6.9(1)(b)

²⁴ ETR Act, s 2.6.9(2)(a)

²⁵ ETR Act, s 2.6.9(2)(b)

²⁶ ETR Act, s 2.6.9(2)(c)

²⁷ ETR Act, s 2.6.9(2)(d)

²⁸ ETR Act, s 2.6.9(2)(e)

²⁹ ETR Act, s 2.6.9(2)(f)

Continuing suitability to be a teacher

A teacher must declare his or her continuing suitability to be a teacher upon renewing his or her registration each year. Declared criminal history and health conditions are again individually assessed during the renewal process. If a person is determined not suitable to teach, the Institute can refuse to renew his or her registration. The Institute can also impose conditions on a teacher's registration requiring assurances of continuing suitability on a more regular basis, if required.

Professional standards

The Australian Professional Standards for Teachers (APST) underpin all regulatory processes the Institute administers. The APST make explicit the expectation that teachers do everything they can to ensure the welfare of those they teach. In particular the standards identify that teachers should:

- Know the students they teach, including:
 - their physical, social and intellectual development and characteristics
 - their diverse linguistic, cultural, religious and socio-economic backgrounds
 - have strategies for teaching Aboriginal students
 - have strategies to support full participation of students with disability and
 - are able to differentiate teaching to meet the specific needs of student across the full range of abilities.
- Create and maintain safe and supportive learning environments, including:
 - managing challenging behaviour and
 - maintaining student safety.
- Engage professionally with colleagues, parents/carers and the community including:
 - meeting professional ethics and responsibilities
 - complying with legislative, administrative and organisational requirements and
 - engaging with parents and carers of those they teach.

The APST acknowledge that teachers must be aware of and comply with legal and organisational requirements in relation to their duties. This includes requirements that pertain to the welfare of those they teach, such as mandatory reporting. The APST also acknowledge the complexity of teaching and the expectation that teachers can make reasonable judgements about the welfare of those they teach and when to refer matters on to a school leader or expert, such as a counsellor or psychologist.

Teachers are required to meet and maintain the APST as a requirement of their continuing registration. By explicitly referencing the obligations of registered teachers to the legislated requirements, policies and procedures under which they work, the APST connect employer requirements with professional requirements. This strengthens the public protection of children within schools and early childhood education and care services.

An Institute survey of registered teachers in 2011 indicated that 98% of the 1,200 respondents were aware of the professional standards. At that time teachers met the Victorian standards of professional practice. Adoption of the Australian Professional Standards for Teachers in 2012 has been accompanied by a strong and on-going communication campaign.

Initial teacher education programs

The Institute also ensures all teachers are trained in professional conduct standards through its accreditation of initial teacher education (ITE) programs used to meet the academic qualification requirements for registration. The national accreditation process used by the Institute applies the APST at the graduate teacher level. Victorian ITE providers are required

to include programs that address standards relating to the welfare of students and to ensure that graduating students are aware of their legal obligations as teachers in Victorian schools. Currently, the Institute has approved over 100 Victorian ITE programs.

The APST at the graduate teacher level make explicit that ITE students understand and apply the key principles described in codes of ethics and conduct for the teaching profession, as well as the relevant legislative, administrative and organisational policies and processes required for teachers in Victoria.

Continuing professional development

Registered teachers must engage in at least 20 hours of a defined quantity and range of professional development activities.³⁰

Professional development must be referenced against the APST and include activities that update the teacher's knowledge about pedagogy, content and/or practice. Teachers must address at least one standard in each of the three domains of professional knowledge, professional practice, and professional engagement.³¹ Standard 4, under the professional practice domain, addresses creating and maintaining supportive and safe learning environments.

As part of the re-registration process teachers must declare that they have completed 20 hours of professional development in order to be eligible for re-registration and are instructed to keep records of professional development activities in case they are selected for the random audit process.

Codes of conduct

The Institute's Code of Conduct was developed in 2008. It aims to promote an environment of collegial oversight—ensuring that Victorian teachers share information relating to the wellbeing of students, communicate appropriately with students, maintain objectivity and professional relationships and maintain a safe learning environment.

Every newly registered teacher is provided with a hard copy of the Code of Ethics and Code of Conduct. These are also made available to all teachers and other people on the Institute website.³²

Principle 1.5 of the Code of Conduct states that teachers are always in a professional relationship with students in their school, whether at school or not. It further states that a professional relationship will be violated if a teacher:

- has a sexual relationship with a student
- uses sexual innuendo or inappropriate language and/or material with students
- touches a student without a valid reason
- holds conversations of a personal nature or has contact with a student via written or electronic means including email, letters, telephone, text message or chat lines, without a valid context
- accepts gifts from students or their parents, which could reasonably be perceived as being used to influence the teacher.

³⁰ <http://www.vit.vic.edu.au/registered-teacher/renewing-my-registration/professional-development>

³¹ http://www.vit.vic.edu.au/media/documents/imported-files/spl/Australian_Standards_poster_A3_colour.pdf

³² www.vit.vic.edu.au

Principle 3.2 of the Code of Conduct states that teachers are aware of the legal requirements that pertain to their profession, including in relation to mandatory reporting.

In 2011, responses from over 1,200 registered teachers to an Institute survey indicated that 83% were aware of the Codes of Conduct and Ethics (up from 39% in 2008). Significantly, 91% of respondents saw these codes as important or very important.

At all points in a registered teacher's regulatory life—whether as a provisionally registered teacher meeting the proficient teacher standards for 'full' registration, or a registered teacher renewing their registration every year—professional conduct must be addressed. These ongoing registration requirements provide a regular opportunity for teachers to explicitly recall and reflect on the expectations of their professional behaviour and to consider the evidence they will provide in relation to this if requested by the Institute.

Obligations to share information with the Institute

Under the ETR Act, certain people are required to notify the Institute of any actions or events that could impact a teacher's registration or permission to teach.

The employer of a registered teacher, such as a government or non-government school, must inform the Institute of any action taken against the registered teacher in response to allegations of serious incompetence or serious misconduct, or allegations that the registered teacher is unfit to teach, or any other actions relevant to the registered teacher's fitness to teach.³³ The employer of a registered teacher must immediately notify the Institute if it becomes aware that the teacher has been charged with or committed for trial for a sexual offence, or if a teacher is convicted or found guilty of a sexual offence.³⁴

The Chief Commissioner of Victoria Police must notify the Institute if he or she becomes aware that a registered teacher has been charged with, or committed for trial for, or found guilty of a sexual offence.³⁵

A registered teacher is required to notify the Institute within 30 days if he or she is committed for trial, or is convicted or found guilty of a sexual or other indictable offence.³⁶

Disciplinary proceedings & measures

The Institute also exercises important disciplinary functions, including specific powers to take action where a teacher has been charged with a sexual offence.

Under the ETR Act, the Institute may inquire into any complaint that a registered teacher is unfit to be a teacher, or a complaint of misconduct or serious misconduct of any registered teacher. It must investigate where there is a complaint of serious incompetence or misconduct, where a complaint involves the continued fitness to teach, when informed that a registered teacher has been convicted or found guilty of an indictable offence other than a sexual offence, or where the employer has taken any action against the registered teacher.

Under the ETR Act, the Institute is empowered to suspend a teacher's registration or permission to teach if he or she is charged with a sexual offence.³⁷ The Institute is not required to conduct a formal investigation before imposing such a suspension; however, the Institute must allow the person to make written submissions, and take those submissions into account.

³³ ETR Act, s 2.6.31(1)

³⁴ ETR Act, s 2.6.31(3)

³⁵ ETR Act, s 2.6.31(4)(a)

³⁶ ETR Act, s 2.6.57

³⁷ ETR Act, s 2.6.27

A teacher who, in Victoria or elsewhere, is convicted or found guilty of a sexual offence automatically ceases to be registered or have permission to teach.³⁸ The effect of such a finding in combination with requirement to be registered is that the teacher will be disqualified from teaching in Victoria.

When a teacher's Victorian registration is cancelled, suspended or conditions are imposed, the Institute must notify the teacher's employer, the Secretary of the Department of Justice and Regulation (in practice, through the WWC Unit), and all teacher registration authorities in Australia and New Zealand.³⁹ It will be similarly notified by teacher registration authorities in other Australian jurisdictions under equivalent state or territory legislation.

The Institute maintains a publicly available register recording all disciplinary action taken against registered or formerly registered teachers, including action taken in response to a conviction or finding of guilt for a sexual offence, and publishes the results of formal hearings and the resolution of disciplinary inquiries by other means (such as voluntary surrender of registration) on its website.⁴⁰

3.4. DET policies, practices and procedures for Victorian government schools

In addition to regulating all Victorian schools and teachers, the Victorian Government directly delivers school education services to Victorian families, through DET. In 2014, more than 500,000 students attended around 1,500 Victorian government schools.

Under the common law, DET has a 'duty of care' to protect children at government schools from reasonably foreseeable harm. DET's *Duty of Care* policy outlines DET's responsibility, including that of principals and teachers as its employees, to take all reasonable steps to reduce the risk of harm to students. Each school is responsible for implementing the *Duty of Care* policy.

In the context of responding to the risk of sexual abuse, reasonable steps to reduce harm may include identifying and responding to risks; employing suitable staff; providing safe and suitable premises and supervising staff and students; as well as responding appropriately to reports and incident of abuse.

School settings

School governance

DET provides guidance to Victorian government schools to ensure that they are able to meet the legislative and policy requirements relating to school governance, including the minimum standards for registration.⁴¹ This includes advice relating to:

- school council arrangements
- accountability and continuous improvement activity
- archives and records keeping
- management and maintenance of safe school premises and equipment

³⁸ ETR Act, s 2.6.29

³⁹ ETR Act, s 2.6.51

⁴⁰ ETR Act, Part 2.6, Division 13A

⁴¹ <http://www.education.vic.gov.au/school/principals/spag/governance/Pages/governance.aspx>. While the Victorian Government does not have responsibility for the management of independent and Catholic schools, these schools are also able to access the School Policy Advisory Guide.

- management of and response to actual or threatened violence at school
- development and implementation of effective risk management strategies and
- meeting obligations and recommended standards of behaviours when using social media tools for personal or professional purposes.

In particular, schools are required to maintain a risk management policy and a risk register for all risks other than occupational health and safety hazards (which are separately managed). School leadership and councils are required to regularly review the risk register, and to have a monitoring and coordinating process, as well as risk management training. Specific activities such as overseas travel may have their own risk registers.

Principals are responsible for identifying and managing risks, ensuring that risk management strategies and processes are in place, keeping appropriate records, allocating resources to risk management, and monitoring and reviewing risks. As public entities, school councils are also required to inform the Minister for Education and DET of known major risks and the systems in place to deal with such risks under the *Public Administration Act 2004* (Vic).

Suitable and safe premises

The *Building Quality Standards Handbook* developed by DET provides detailed design requirements to ensure that schools provide a safe and secure environment for students, staff and visitors. Section 4.6 *Security and Safety* provides that designers should consider, among other things, design which promotes good supervision of all areas by teachers and logical street access that directs visitors to administration facilities and permits the supervision of entries.⁴² All completed projects undergo a post-occupancy evaluation to ensure that all design requirements have been met and any new learnings can be applied to future projects.

DET's Security Services Unit, delivers a range of security and crime prevention services to schools, including advice on physical and electronic measures (alarm and duress systems); personal safety; closed circuit television monitoring; fencing; lighting and glazing; car park safety; signage; trespass management and computer security.

Visitors in schools

Creating a safe environment for students includes effectively managing visitors to school premises. Typical visitors to schools may include those addressing a learning or developmental need such as invited speakers, sessional instructors or community representatives, or people conducting business with the school.

Under DET's *Visitors in Schools* policy, school councils must develop and approve written policies and procedures to manage visitors to the school. Principals are responsible for implementing the Visitors policy or procedure, be responsible for visitors allowed in schools, and ensure that, as a minimum, all visitors arriving and departing during school hours use a visitors' book to record their name, their signature, the date and time, the purpose of the visit.⁴³

Online environment

Using Social Media Tools: Guide for Department Employees in Schools has been developed as a practical resource to support DET employees in schools to understand and meet their obligations including the duty of care to protect students from reasonably foreseeable harms

⁴² <https://edugate.eduweb.vic.gov.au/sc/sites/Infonline/Policies%20Guidelines%20and%20Procedures/Forms/BQSH.aspx>

⁴³ <http://www.education.vic.gov.au/school/principals/spaq/safety/Pages/visitorsinschool.aspx>

that could occur within a digital setting,⁴⁴ as well as professional standards for behaviour under the Victorian Teaching Profession Code of Conduct and the relevant policies and legislation.

The *DET Step-by-Step Guide for Responding to Online Incidents of Inappropriate Behaviour Affecting Students*⁴⁵ (Step-by-Step Guide) assists school staff to identify and respond to incidents of concern, including:

- sexting, inappropriate behaviour and exposure to pornographic material which causes distress to a student or places the student at risk of harm or
- where a student has engaged in such behaviour that may cause harm to another student, could be deemed criminal or could be psychologically or emotionally damaging to themselves.

The Step-by-Step Guide requires staff to report incidents to the school's leadership and wellbeing teams, the students' parents/guardians, and Victoria Police and DET's Security Service Unit where a criminal offence may have occurred. Staff should also provide a wellbeing referral in consultation with relevant regional office staff.

Policies relating to staff

The framework for suitability, selection, supervision and performance management of teachers in government schools is established in various human resources guidelines and professional codes of conduct.

These policies and procedures ensure that appropriate people are selected to work with children, establish clear expectations of appropriate behaviours and best practice by employees and support the establishment and maintenance of a child safe and child friendly environment in Victorian government schools.

Staff and volunteer suitability for employment

Employment screening is an important factor in selecting appropriate personnel to work with children, and removing or reducing the risk of abuse. DET is aware that screening practices should not be limited to criminal background checks, and should also include consideration of the application and employment history, verification of qualifications and other relevant information, reference checks and interviews.

Ministerial Order 199 (Teaching Service Order 2009) applies to people employed in the government Teaching Service under the ETR Act, and sets out arrangements for employment conditions, salaries and selection and conduct of staff. Teaching Service Order 2009 requires any person undertaking teaching duties to be a registered teacher, and any person employed in a school based role to have successfully completed a WWC Check. All other employees are required to satisfactorily complete a National Police Record check.⁴⁶

DET's *Suitability for Employment* policy outlines policies and procedures to be followed in relation to the required suitability and probity checks, and provides guidance for school councils in relation to establishing their own Volunteer policy. Government schools must establish and implement policies to assess and verify the suitability of volunteers who will work with children including requiring all volunteers to provide evidence of their suitability. This evidence is generally a WWC Check. However, in addition to a WWC Check, a school may also consider it necessary that a criminal record check is conducted through DET. This may

⁴⁴ <http://www.education.vic.gov.au/about/programs/bullystoppers/Pages/socialmedia.aspx>

⁴⁵ <http://www.education.vic.gov.au/Documents/school/principals/management/incidents.pdf>

⁴⁶ Teaching Service Order, Part 3, Division 2

occur when possible offences are relevant to the duties of the volunteer, for example dishonesty offences, which are not relevant offences for the purposes of a WWC Check.⁴⁷

Staff selection

DET's school recruitment policies provide clear guidance on comprehensive pre-employment screening practices and aim to ensure that students are protected from any potential harm, including the risk of sexual abuse by school staff.

Teaching Service Order 2009 outlines requirements for recruitment in government schools including professional requirements, selection panel composition, interviews and detailed referee checks.

DET's *Recruitment in Schools* policy provides comprehensive information concerning selection of staff, including conducting referee reports. Referee reports are a critical part of the assessment of the relative merits of each short-listed applicant. The views of referees nominated by the applicant and those of non-nominated referees are sought.

The *Recruitment in Schools* policy also outlines fit and proper person and registration requirements, the process for conducting suitability checks, and requirements to retain documents used in the selection process, including any concerns identified, on file.⁴⁸

Supervision, support and performance management

DET's *Guidelines for Managing Complaints, Misconduct, and Unsatisfactory Performance in the Teaching Service* (Teaching Service Guidelines) set out DET best practice and policies to assist with complaints against employees and unsatisfactory performance and misconduct involving employees.⁴⁹ The Guidelines support a culture that promotes high standards of conduct and encourages performance improvement in government school education. They uphold the position that misconduct and unsatisfactory performance is expected to be dealt with promptly and fairly and with a focus on improving performance.

DET's *Performance and Development Guidelines* (PD Guide),⁵⁰ outlines processes by which a government school teacher's performance is reviewed. The approach, introduced in 2015, uses a continual feedback and review model based on goals and a Performance and Development Plan jointly determined by the teacher and school leadership. Goals and performance indicators are based on the APST, which include the responsibility to create and maintain a safe learning environment. The Principal has ultimate responsibility for the Performance and Development process for all teachers, and the process is conducted continually through the year based on evidence of student outcomes, reflection, and feedback from colleagues. The PD Guide aims to foster a culture of professional accountability and continual feedback.

DET's *Roles and Responsibilities (Teaching Service) Guide* outlines position responsibilities which detail supervisory practices within Victorian government schools.⁵¹ These include the expectation that 'leading teachers' will develop the school's codes of conduct, lead the implementation of operations and policies relating to student welfare, and manage staff performance and development. It also outlines the expectation that more experienced

⁴⁷ http://www.education.vic.gov.au/hrweb/Documents/Suitability_for_employment.pdf

⁴⁸ http://www.education.vic.gov.au/hrweb/Documents/Schools_recruitment.pdf

⁴⁹ Human Resources Guidelines for Managing Complaints, Unsatisfactory Performance and Misconduct - Teaching Service, page 4: http://www.education.vic.gov.au/hrweb/Documents/Complaints_Misconduct_and_Unsatisfactory_Performance.pdf

⁵⁰ <https://edugate.eduweb.vic.gov.au/Services/Schools/SchoolStaffPerformanceDev/Documents/Performance%20and%20Development%20Guidelines%20for%20Teachers%202015.pdf>

⁵¹ http://www.education.vic.gov.au/hrweb/Documents/Roles_and_responsibilities-TS.pdf

classroom teachers will mentor less experienced teachers and supervise and train student teachers.

Employment action

Disciplinary action for misconduct in the government teaching service is taken under the ETR Act.⁵² The Secretary of DET is empowered, after investigation, to take action against an employee who (among other things):

- conducts himself or herself in an improper or disgraceful manner⁵³
- commits an act of misconduct⁵⁴
- is found convicted or guilty of a criminal offence⁵⁵ and/or
- is unfit on account of character or conduct to conduct his or her duties.⁵⁶

Disciplinary action taken against a teacher under the ETR Act may include a reprimand, fine, reduction in classification or termination of employment.⁵⁷

The DET Teaching Service Guidelines (discussed above at Supervision, support and performance management) provide comprehensive advice to all employees, principals and managers in relation to the management of complaints, misconduct and unsatisfactory performance in government schools. Principals and managers must contact DET's Conduct and Ethics Branch for procedural advice and support regarding allegations of misconduct involving sexual abuse or a sexual offence.⁵⁸

School-based employees who are the subject of allegations of sexual misconduct will be removed from duty while an investigation takes place. In most instances, including where there are concerns about student well-being and safety, an employee will be suspended from duty, with or without pay, but in some instances he or she may be re-assigned to a non-school location while suspension is being considered, if appropriate.

If an employee accused of a sexual offence is not charged, convicted or found guilty, DET may still take disciplinary action in relation to the person's conduct. If the employment relationship ends before the discipline procedure is concluded, an employment limitation will usually be imposed on the employee. The *Employment Limitation Policy* ensures disciplinary processes are not circumvented by a person resigning from one workplace and being employed in another or gaining re-employment following termination. A government school cannot process the employment of a person who is subject to an employment limitation through DET, as the addition of the new employee will be blocked on DET's central payroll system. Additionally, government schools are required by the *Employment Limitation Policy* to check the central payroll before hiring a new employee on the school's local payroll. DET also notifies the Institute when an employment limitation is placed on a teacher, irrespective of whether an investigation was completed. This is to avoid a teacher being able to move from the government to the non-government sector without the registration body being made aware of unresolved conduct or performance issues.

⁵² ETR Act, Part 2.4, Division 10

⁵³ ETR Act, s 2.4.60 (a)

⁵⁴ ETR Act, s 2.4.60 (b)

⁵⁵ ETR Act, s 2.4.60 (c)

⁵⁶ ETR Act, s 2.4.60 (i)

⁵⁷ ETR Act, s 2.4.61 (a) – (d)

⁵⁸ Sexual offence is defined in the ETR Act s 1.1.3.

Policies relating to student behaviour and education

Policies relating to student behaviour and education aim to prevent and address problem sexual and abusive behaviour by students at an early stage, and to protect students who may be vulnerable to such behaviours. Educating students about respectful relationships and appropriate behaviour also complements reporting and response processes by empowering students to identify and raise concerns about abusive behaviours.

Supervision

DET's *Supervision* policy ensures government schools satisfy their duty of care in supervising students.⁵⁹ Principals must arrange for student supervision according to school needs and ensure that staff are aware of their responsibility to supervise students during school times and immediately before and after school. DET also has guidelines for supervision in specific circumstances, including recess and lunchtimes, outside school grounds, and in relation to visiting speakers or instructors.

The *Supervision* policy includes guidance for one-teacher schools, to ensure that the teacher is able to uphold the same duty of care to students as teachers in larger schools, for example making sure that students are appropriately supervised at recess and lunchtimes and when the teacher is absent due to illness or delay.

Student Engagement Policy

Positive student behaviours are most effectively developed and supported through relationship-based, whole-school and classroom practices, as well as clearly communicated behavioural expectations.

Some students exhibit challenging behaviour and require additional support and interventions to address this behaviour and to develop positive behaviours.

Behavioural expectations, approaches to promoting positive behaviour and consequences for breaching behavioural expectations should be set out in a school's *Student Engagement Policy*.⁶⁰

In most schools and for most teachers, challenging behaviour can generally be understood as something that either interferes with the safety or learning of the student or other students, or interferes with the safety of school staff. This can include violent and/or unsafe behaviours, or inappropriate social behaviours such as inappropriate conversations, inappropriate touching or masturbation.

DET provides guidance for schools to understand and identify influences on student behaviour, including emotional trauma or abuse. DET's *Student Engagement and Inclusion Guidelines* also provide guidance on developing a Student Engagement Policy which articulates the school community's shared expectations in the areas of student engagement, attendance and behaviour. The policy supports the rights and articulates the expectations of every member of the school community to engage in and promote a safe and inclusive educational environment.⁶¹

Behaviour Support Plans

A Behaviour Support Plan is a school-based document designed to assist individual students who have experienced harm, are at risk of harm, or have caused harm to others.

⁵⁹ <http://www.education.vic.gov.au/school/principals/spag/safety/Pages/supervision.aspx>

⁶⁰ <http://www.education.vic.gov.au/school/principals/participation/Pages/studentbehaviour.aspx>

⁶¹ <http://www.education.vic.gov.au/school/principals/participation/Pages/studentengagementguidance.aspx>

Targeted plans can be developed for students who have been diagnosed with severe behaviour disorders; students who have bullied others; students who have been bullied; students who require additional assistance because they display difficult, challenging or disruptive behaviours; as well as students who can benefit from additional wellbeing support.

DET provides guidance and resources to schools to develop Behaviour Support Plans that are tailored to the needs of individual students.⁶²

Students and schools can benefit from an effective Behaviour Support Plan by supporting students to build skills needed for pro social behaviour and increasing the student's wellbeing; identifying previously unknown causes and triggers of problem behaviours; and gradually reducing problem behaviours as causes are identified and addressed.

Exploring the causes of a student's behaviour may cause a staff member at the school to form a reasonable belief that a child is being physically and/or sexually abused. Under mandatory reporting legislation, the school may be obligated to report to DHHS. If staff become aware of problem sexual behaviour, or an allegation of sexual assault, DET's procedures for responding to student sexual assault must be followed. These procedures are discussed below.

Sexuality and Respectful Relationships Education

In Victoria, it is compulsory for government schools to provide sexuality education, as well as education on basic safety skills and strategies at home, school and in the community. Schools must assess and report on students' progress against the AusVELS, the Victorian Foundation to Year 10 curriculum.

The Victorian Government has recently announced curriculum reforms which include specific reference to 'respectful relationships' and 'safety in the home'. Victoria will support schools to implement respectful relationships education, including through promotion of existing evidence-based resources, such as:

- *Building Respectful Relationships: Stepping Out Against Gender-based Violence* (Building Respectful Relationships)
- *Building Resilience*, a series of learning materials and online resources aim to equip children and young people with the tools to deal with the range of changes and challenges they face as they grow up
- *Catching on Early* and *Catching on Later*, a suite of age-appropriate sexuality education teaching and learning activities and
- *Daniel Morcombe Child Safety Curriculum* which focuses on child abuse prevention.

Schools are also free to choose or develop their own resources to support curriculum implementation or engage a partner organisation.

The state-wide introduction of respectful relationships education follows a pilot program in 19 government and non-government schools, which is trialling a whole-school approach to implementation of the Building Respectful Relationships teaching and learning resources commissioned by DET and developed by CASA House and Deakin University. This resource was released in 2014, and teaches Years 8 and 9 students about gender equality and respect in relationships and seeks to prevent violence against women and children. In addition to the longer term benefits of respectful relationships education in reducing family violence, DET anticipates that these measures will have a positive impact on the capacity of children and young people to engage in positive, respectful and non-violent relationships with each other in a school setting, and to seek help when they feel unsafe.

⁶² <http://www.education.vic.gov.au/about/programs/bullystoppers/Pages/teachplans.aspx>

The Victorian Government will work with schools, educators and peak bodies to ensure that respectful relationships education is effectively delivered across the education sector.

Responding to reports and incidents of abuse

Reports and complaints

The Victorian Government requires all complaints about government schools to be investigated. In addition to receiving and responding to reports by students, schools must develop local policy and procedures for parent complaints in accordance with the DET policy, *Addressing parent concerns and complaints effectively: policy and guides*, and make information about its complaints processes readily available. The Parent Complaints policy for government schools is available on the DET website, which also provides links to resources and external agencies and organisations such as the Ombudsman and Parents Victoria.⁶³

The underlying premise of the Parent Complaints policy is that concerns and complaints are most effectively managed at the school level. However, the policy does not apply to matters for which there are other processes for review and appeal, such as matters relating to serious employee misconduct, student critical incidents and criminal activities.

Procedures for initial response – student sexual assault

The Joint Protocol, discussed above at section 3.1, provides guidance on taking action in suspected cases of physical and/or sexual abuse. The Joint Protocol sets out the kinds of grounds which may lead to a person forming a reasonable belief that a child is being physical and/or sexually abused, thereby triggering mandatory reporting obligations. This includes disclosures that abuse has occurred from the child or someone who knows the child, signs of physical or sexual abuse, unexplained injury, or persistent family violence that is impacting on the child's safety. It also outlines arrangements for information-sharing between DET and DHHS.

DET's *Responding to Allegations of Student Sexual Assault – Procedures for Victorian Government Schools* also outlines procedures for government schools when responding to allegations of student sexual assault and problem sexualised behaviours by students under 10 years.⁶⁴

The procedures apply where a student is involved in a sexual assault either as a victim or perpetrator and the incident is disclosed or occurs in the school context. Schools must immediately respond to a disclosure or incident, or where a staff member forms the view that action needs to be taken based on his or her own observations.

The principal of a school has the primary responsibility for managing the school's response to student sexual assault, with Victoria Police and DHHS responsible for criminal investigations and child protection respectively. In cases of student-to-student sexual assault, schools have a duty of care to both the perpetrator and the victim.

Responding to Allegations of Student Sexual Assault also outlines measures schools should take to support students immediately and in the long term, preserve evidence, and document the incident, and provides guidance on how to communicate with the school community, media, and the public. In particular, schools must contact the alleged victim's parents as soon as possible, and put in place safety plans for each student involved. *Responding to Allegations of Student Sexual Assault* also provides information about relevant support and

⁶³ <http://www.education.vic.gov.au/school/principals/spag/community/pages/parentcomplaints.aspx>

⁶⁴ <http://www.education.vic.gov.au/Documents/school/principals/safety/sexualassaultp.pdf>

guidance provided by the Victorian Government to schools, including support available through DET, Victoria Police, DHHS, and Victorian Centres Against Sexual Assault.

Student Critical Incident Advisory Unit

DET's Student Critical Incident Advisory Unit (SCIAU) is responsible for DET's *Responding to Allegations of Student Sexual Assault* procedures and for responding to serious incidents of a sexual nature occurring in government schools. SCIAU, the relevant regional office and the school manage incidents of student sexual assault in partnership. SCIAU provides advice and support to ensure schools have appropriate supports in place to maximise the health and wellbeing of all students involved in sexually-related incidents. SCIAU works closely with other Victorian Government agencies and non-government organisations, such as the Centres Against Sexual Assault, Childwise, Australian Childhood Foundation, Children's Protection Society and the Royal Children's Hospital Gatehouse Unit to support student wellbeing in schools.

Sexual assault - supports for students

Schools must develop an Individual Management Support Plan for each student involved in a sexual assault. The plan must be developed with the student, the parents/carers and relevant staff. External agencies providing support may also be involved. DET also provides support to students involved in police investigations or court proceedings, including access to specialist counselling support and referrals to external providers as required.

DET employs, funds, supports and sets policy and guidelines for a range of wellbeing staff and allied health professionals in government schools including Primary Welfare Officers, Student Welfare Coordinators, the National School Chaplaincy Program, Student Support Services and the School-focused Youth Service. These network and school-based allied health and support staff work in a range of ways to assist children and young people who have additional needs, or are disadvantaged or vulnerable, including those who have been affected by child abuse and/or family violence, to achieve their educational and developmental potential.

DET also refers and connects students with specialist support services that are equipped to provide long-term counselling for victims/survivors of sexual abuse and assault, such as Centres Against Sexual Assault.

Suspension and expulsion procedures

A student may be suspended or expelled if, whilst attending school, travelling to or from school, or engaged in any school activity he or she behaves in a way that poses a danger, whether actual perceived or threatened, to the health, safety or wellbeing of any person. This may include where a student has sexually assaulted another student.

Ministerial Order 625 sets out procedures for suspension and expulsion of students enrolled in Victorian government schools.⁶⁵ Under Ministerial Order 625, only principals have the authority to suspend or expel a student from the school of which he or she is the principal.

When determining whether to suspend or expel a student, the principal must ensure that suspension is appropriate to the educational needs of the student, any disability of the student, and the residential and social circumstances of the student. The principal must also be able to ensure that the student has had the opportunity to be heard and provide supervision of the student until the student is collected by a parent or emergency contact.

⁶⁵ <http://www.education.vic.gov.au/Documents/school/principals/participation/minorder625.PDF>

The principal's decision to expel a student depends on the magnitude of the student's behaviour. When determining whether to expel a student, the principal must have regard to the need of the student to receive an education, compared to the need to maintain the health, safety and wellbeing of other students and staff at the school and the need to maintain the effectiveness of the schools educational programs.

Prior to expelling a student, the principal must undertake a number of steps, including convening a behaviour review conference with a student and his or her parent, guardian or nominated person (where the student is a mature minor); and provide a written Expulsion Report including the reasons for expulsion.

Following expulsion, the principal and DET regional office must ensure that any student of compulsory school age is enrolled at another school, a registered training organisation or engaged in employment.

Sharing information

Mandatory reporting

As discussed above, teachers and principals have a legal obligation to report to police and child protection services under the CYF Act if they have a reasonable belief that a child is being abused or neglected and that the child's parent is not able to protect the child from harm. This includes if the child is being or has been sexually and/or physically abused. Additionally, any person may make a report to DHHS Child Protection if the person believes that a child is in need of protection. The identity of the reporter in both cases is kept confidential, and the reporter is protected from legal liability or professional disciplinary issues arising from the report if they have made a good faith report.

These obligations are outlined in the Joint Protocol as well as DET's *Child Protection – Reporting Obligations* policy of the School Policy Advisory Guide, which is available from DET's website. The *Child Protection – Reporting Obligations* policy outlines roles and responsibilities of school staff in protecting the safety and wellbeing of children and young people. In addition to the reporting obligations under the CYF Act, the policy also outlines the duty of care between school staff and children in their care, the offence of failing to protect a child from the risk of sexual abuse, types of child abuse and indicators of harm, when to report, guidance on what indicates a belief on reasonable grounds, and counselling support payments. It also provides information on dealing with potential consequences of reporting, including information about support for the child, witness summons', protection of identity of reporters, and protection from legal liability and disciplinary consequences arising from reporting.⁶⁶

Barriers to effective information-sharing

The Victorian Government is currently working to address barriers to reporting and information-sharing, which include:

- difficulties in navigating privacy law
- potential repercussions for persons who report abuse
- concerns about the impact of reporting on students.

⁶⁶ <http://www.education.vic.gov.au/school/principals/spaq/safety/Pages/childprotection.aspx>

Privacy

The *Privacy and Data Protection Act 2014 (Vic)* and the *Health Records Act 2001 (Vic)* (collectively, Victorian privacy law) allow for information-sharing where it is required or authorised under law.⁶⁷ Importantly, this means that information-sharing by a school is permitted when necessary to fulfil its duty of care to a student, or when necessary to provide a safe workplace, or to provide reasonable adjustments for students with disabilities or to the extent required to treat a student with a disability. In particular, DET's policy on student transfers requires schools to provide transfer notes on students who are transferring to a new school, including information about any foreseeable risks associated with the students.⁶⁸ Victorian privacy law also allows schools to share information if they reasonably believe that it is necessary to prevent a serious and imminent threat to an individual or to the public health safety or welfare, to investigate any unlawful activity, or for investigations by law enforcement authorities.⁶⁹

However, school staff may not be aware that such information-sharing is permitted under Victoria privacy law. Staff may also be reluctant to share information out of fear of stigmatising students or making a mistake or incorrect judgment call. DET is working to address misconceptions that privacy law prevents information-sharing outside the mandatory reporting scheme, and to ensure that school staff understand that privacy law does not prohibit acting on information where there is a foreseeable risk of harm.

Repercussions for reporters

The CYF Act provides that the identity of all reporters, whether voluntary or mandatory, will be kept confidential. However, in practice, it is often possible to determine the identity of the reporter, particularly in small rural schools. This may dissuade reporting, especially by staff members who are not subject to the mandatory reporting scheme. Reporters may fear reprisal not only against themselves, but also against the child who disclosed the abuse. They may also be reluctant to be involved in a legal process such as a criminal trial, or fear that reporting may jeopardise the relationship between the staff and the school community.

Impact of reporting on students

A further barrier to reporting and information-sharing is concern about the impact of a report on affected students. In particular, there is a risk that mandatory reporting will lead to disengagement of students and families from social or health services, and that the student or family may avoid seeking support if they are concerned about someone they know being reported to police. Potential reporters may also be concerned about the impact of reporting on the relationship between staff and the affected child, or fear that there may be reprisals against the alleged victim of abuse. These risks need to be managed to ensure that any reporting system is effective.

These concerns are particularly complex in situations where students are displaying sexualised and/or abusive behaviours, and where staff may be concerned about labelling a child as a 'predator' or a sexual offender. For example, it may be inappropriate to tell the parents or carers of other students in the school about the behaviour, as this may breach the student's privacy, and is likely to affect their social relationships and potentially alienate the student. However, the staff member should inform the students' subsequent schools of the behaviour, to enable those schools to fulfil their duty of care. Disclosing the information to external professionals may be required in cases involving a criminal investigation, a

⁶⁷ Information Privacy Principle (IPP) 2.1(f); Health Privacy Principle (HPP) 2.2(c)

⁶⁸ <http://www.education.vic.gov.au/school/principals/spag/participation/Pages/transfers.aspx>

⁶⁹ IPP (d), (e), (g); HPP 2.2(h)-(j)

mandatory reporting requirement, or a risk to the safety of a person or the public. These considerations can be difficult for a staff member to navigate, and highlight the need for staff members to be educated about privacy and information-sharing in cases of abuse.

Need for staff education on privacy and information-sharing

Each of these concerns underlines the importance of school policies that clearly set out procedures for principals and school leadership regarding investigations and confidentiality, and which are clearly communicated to the school and school community. These concerns also highlight the importance of educating staff on the effects of abuse, identifying abuse, how and when to report abuse, and relevant legal obligations regarding information-sharing and reporting. DET is aware that schools need systems and processes to collate information in order to assess whether to report and to provide a full picture to relevant authorities, and to monitor and support the child on an ongoing basis. DET is considering these issues and improvements to current information-sharing processes in the best interests of children and young people.