



Commissioner for Children and Young People
Western Australia

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

Submitted by email to: solicitor@childabuseroyalcommission.gov.au

Dear Justice McClellan

Issues paper 3: Child Safe Institutions

Thank you for the opportunity to comment on this issue.

As Commissioner for Children and Young People in Western Australia I have a statutory role to promote policies, laws, programs and services that protect and enhance the wellbeing of children and young people under the age of 18 years in Western Australia. My functions are set out in section 19 of the *Commissioner for Children and Young People Act 2006*. In undertaking my role I must give priority to the needs of Aboriginal and Torres Strait Islander children and young people and children and young people who are vulnerable or disadvantaged in some way. I must also have regard to the United Nations Convention on the Rights of the Child.

I have collaborated with children's commissioners and guardians in other jurisdictions in the publication of *Principles for Child Safety in Organisations*. This document, with a comprehensive submission, has been submitted to the Royal Commission for consideration in your call for submissions on *Issues paper 3: Child Safe Institutions*. I would like to provide some additional comments based on my consideration of these matters in the context of the Western Australian experience.

The abuse of children and young people can occur across a range of settings including in families and in foster care arrangements, large and smaller institutions, residential and non-residential settings, and government, non-government and private sector organisations. Given the focus of this issues paper I will direct my comments to abuse that occurs in an institutional context and the strategies that are required to promote practices that can improve the prevention, disclosure and detection of child abuse.

Caring for the future growing up today

Systemic factors that facilitate child abuse

The report¹ from the St Andrew's Hostel Katanning Special Inquiry in Western Australia, and from other similar inquiries in Australia and overseas, provides important insight into the nature of child abuse in institutions, how it occurs and how it is enabled to persist. The evidence gathered by these inquiries indicates that children and young people in institutions are vulnerable to a range of abuse, perpetrated by a wide range of people, including staff, professionals, family, carers, other children and young people, and strangers. It also shows that some children and young people are more vulnerable, such as those with disability or those who have previously been abused, and that children and young people in residential settings are also at increased risk.

It is clear that no single strategy will address the complex range of factors that can create opportunities within organisations for child abuse to occur. The principles set out in the ACCG's *Principles for Child Safety in Organisations* provides a comprehensive framework for organisations to develop the strategies required to improve the safety of children and young people. Similarly the National Framework *Creating Safe Environments for Children – Organisations, Employees and Volunteers* provides a detailed guide to developing child safe organisations. The strategies developed will require tailoring to the specific environment, service and activities of each individual agency.

Critical elements of child safe organisation frameworks

The Australian Institute of Family Studies literature review of child maltreatment in organisations states that, '*The task of protecting children in the care of organisations is multi-faceted*', and cites three key areas, administrative functions, physical environments and organisational culture, as requiring attention.²

Whilst a broad range of strategies are required I would like to draw specific attention to the following elements.

Empowering children and young people to raise concerns and report incidents

Inquiries raise the same issues in regard to the reasons children and young people give for not reporting abuse or their feelings of being unsafe. These include, not knowing who or not having anyone to tell, fear of reprisals or punishment, shame and embarrassment, believing that they are somehow at fault or, particularly for those with a history of abuse, that the abuse is 'normal' or deserved. Too often history has also shown us that children and young people have often not been believed when they have come forward and reported incidents of abuse or expressed their concerns about unwelcome attention or behaviour. Strategies to overcome these barriers need to be central to every organisation's measures to address the vulnerability of children and young people to abuse of any kind.

I have advocated for the introduction of robust protective behaviours education within our public schools system. Protective behaviours education provides children and young people with the skills, strategies and confidence to identify, respond and seek help to address behaviours that make them feel unsafe. Additional targeted protective behaviours programs for vulnerable children and young people should also be provided

by organisations that are caring for them. This includes children and young people in residential facilities and tailored to the children and young people they accommodate.

Protective behaviours education needs also to be supported by complaints mechanisms that are accessible and responsive to children and young people to ensure that they are able to raise concerns and report incidents confidently and safely. One of my statutory functions as Commissioner for Children and Young People in Western Australia is to monitor the way in which government agencies investigate or otherwise deal with a complaint made by a child or young person.

Often agencies report that they do not receive many, if any, complaints directly from children and young people. Where children and young people do access complaints systems it is most often with the support of an adult. Consequently it is important that such systems are both accessible to children and young people who wish to use an advocate and to those who do not have an adult support person available to them.

It is clear that many organisations do not have complaints systems that are accessible or responsive to children and young people, or adults acting on their behalf. Key elements of an accessible and responsive complaints system include, being visible and welcoming to children and young people, having flexible methods for making a complaint, providing appropriate respect for confidentiality, responding quickly and keeping people informed of the progress of the complaint, and, taking children and young people seriously and treating them with respect. Measures to ensure accountability and continuous improvement in relation to complaints from children and young people, such as recording relevant data, should also be included in complaints systems.

I have produced guidelines to assist agencies develop their complaints systems to ensure they are accessible and responsive to children and young people. The *Are you listening? Guidelines for making complaints systems accessible and responsive to children and young people* are available to download from my website at www.cryp.wa.gov.au . To complement these guidelines I offer regular seminars, in collaboration with other agencies, to provide guidance and practical information on the implementation of the guidelines.

I also promote examples of good practice through my website, profiling the work done by other agencies to improve their complaints systems for children and young people. Specifically I draw your attention to the example on my website of the work undertaken by the WA Department of Education and the Country High Schools Hostels Authority (the Authority) to improve the accessibility and responsiveness of the complaints system for children and young people residing in education hostels throughout WA. This work was undertaken following the report of the St Andrew's Hostel Katanning Special Inquiry which recommended the Authority '*develops a comprehensive, child focussed complaint system*'.³ Importantly, the agencies consulted with children and young people in the development of the system and the complementary resources.

Ensuring that children and young people are involved in the development of policies and processes that affect them is central to ensuring that the systems will be effective

in meeting their needs and supports a child-centred organisational culture. I have produced guidelines to assist organisations in the meaningful involvement of children and young people within their organisations. The *Involving Children and Young People – Participation Guidelines* are also available to download from my website.

Staff and volunteer supervision and professional development

The merits of Working with Children Check pre-employment screening systems have already been canvassed by the Royal Commission. These systems have a critical place in supporting child safe recruitment practices and they also have limitations. I note specifically that, *'research has also indicated that, when charged, the majority of perpetrators detected do not have prior convictions for any form of child maltreatment, and thus would not have been detected by screening processes.'*⁴ Other limitations include the lack of national consistency in screening processes across Australia and the capacity to exchange information between jurisdictions. For example, I understand that in Western Australia it is not currently possible to receive updates of new offences from other jurisdictions⁵.

It should be acknowledged that work is being done at a national level to improve the consistency of screening across Australia and the exchange of criminal and other relevant information between jurisdictions on an ongoing basis. It is important that this work is progressed and strategies implemented to facilitate the required changes.

Screening programs need to be supplemented by additional strategies. Particularly, organisations need to implement policies and processes for staff development and supervision to ensure that staff have, and apply, the relevant skills and attributes to work safely with children and young people, identify signs of abuse, and respond appropriately to children and young people who raise concerns or report incidents.

Concerns about abuse are less likely to be raised by children and young people through a formal complaints system but more rather as a disclosure to a trusted person. Training of all staff in organisations that work with children and young people to respond to disclosures of abuse and to take matters of complaint seriously is essential to ensure that these disclosures are acted on promptly, appropriately and with due sensitivity in practice.

Reporting and management of suspected abuse

Again there is considerable evidence put forward in other inquiries to show that organisations have consistently failed to report and act appropriately in the management of child abuse disclosures. These failures allowed perpetrators of abuse to continue abusing children either within the same organisation or by moving to other organisations. The St Andrew's Hostel Katanning Special Inquiry identified three factors that facilitated these failures, disbelief of the allegations, desire to uphold the reputation of the organisation and fear of defamation proceedings.⁶

It is critical that reporting and management policies and processes for responding to allegations of abuse prioritise the elimination of risk to children and young people as the paramount consideration and that staff are aware of correct procedures and receive appropriate training to implement policies and procedures effectively.

Governance systems and management leadership should support a culture where child safety is prioritised in policy and practice and ensure that policies and practices are adhered to in responding to any risks suspected, identified or disclosed. Importantly, organisations systems should not attempt to divert or replace the criminal justice system and where criminal behaviour is involved, such as child sexual abuse, matters should be referred to the police and/or the relevant statutory child protection agency for appropriate investigation.

Standards and monitoring systems

Importantly, organisations that are child safe foster a culture of openness where external scrutiny is welcomed. The need for external, independent scrutiny of organisations has been identified in a number of inquiries including the inquiry into the child protection system in Victoria in 2012 which found that, *'External scrutiny of service delivery can provide independent assurance that services are well managed, safe and fit for purpose...'*⁷

I draw the Royal Commission's attention to the Australian Childhood Foundation's national accreditation program for organisations, Safeguarding Children Program⁸. The Program provides a comprehensive framework for establishing a child-safe organisation and also provides some measure of external review via a three yearly audit of the organisation against the recognised best practice standards.

Examples of other models that can provide additional measures of external scrutiny include,

- the Community Visitors Program operated by the Commissioner for Children and Young People and Child Guardian in Queensland,
- the Case File Audit Program undertaken by the NSW Children's Guardian and
- the service inspections undertaken by the Office for Standards in Education, Children's Services and Skills (Ofsted, UK).

Each of these models offers a different type of external scrutiny. Relying on children and young people to disclose abuse is not sufficient and proactive, preventative measures need to be employed. Systems that engage directly with children, such as visiting programs, provide an additional avenue for children and young people to raise concerns and report abuse.

It is important that external monitoring and oversight mechanisms are independent and have sufficient scope to investigate and report on matters that impact on children and young people's wellbeing and safety whilst ensuring that they do not become overly complicated or bureaucratic. I note the recent findings of the Queensland Child Protection Commission of Inquiry⁹ which found that complaints and oversight mechanisms had become overly complicated and duplicative.

Evidence based practices

I support the evaluation of strategies, programs and services. More evaluation is required to ensure that strategies designed to improve the safety of children and young people are achieving their intended aims.

I appreciate the opportunity to provide these comments to the Royal Commission and would be happy to provide further comment if required.

Yours sincerely



MICHELLE SCOTT

Commissioner for Children and Young People WA

10 October 2013

¹ Blaxell, P (2012) St Andrew's Hostel Katanning: How the system and society failed our children. Public Sector Commission, Government of Western Australia. <http://www.publicsector.wa.gov.au/public-administration/sector-performance-and-oversight/reviews-investigations-and-special-inquiries/special-inquiries/st-andrews-hostel-inquiry>

² Irenyi, M., Bromfield, L., Beyer, L. & Higgins, D. (2006) Child maltreatment in organisations: Risk factors and strategies for prevention. Issues paper No. 25 Spring 2006. National Child Protection Clearinghouse, Australian Institute of Family Studies.

³ Op cit. Blaxell, P pp339

⁴ Irenyi, M., Bromfield, L., Beyer, L. & Higgins, D. (2006) Child maltreatment in organisations: Risk factors and strategies for prevention. Issues paper No. 25 Spring 2006. National Child Protection Clearinghouse, Australian Institute of Family Studies pp 17

⁵ State of Western Australia. Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse. Issues Paper 1 – Working with Children Check - Submission number 37

⁶ Op cit. Blaxell P pp291

⁷ *Report of the Protecting Victoria's Vulnerable Children Inquiry* (2012) Department of Premier and Cabinet, Melbourne, Victoria. www.childprotectioninquiry.vic.gov.au

⁸ Australian Childhood Foundation Safeguarding Children Program
<http://www.safeguardingchildren.com.au/home.aspx>

⁹ Carmody, T (2013) *Taking Responsibility: A Roadmap for Queensland Child Protection*. Queensland Child Protection Commission of Inquiry. State of Queensland. pp 419.