



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: contact@childabuseroyalcommission.gov.au

Dear Justice McClellan

Re: Consultation Paper - Best practice principles in responding to complaints of child sexual abuse in institutional contexts, March 2016

As Commissioner for Children and Young People in WA I have a statutory responsibility to monitor and review written laws, policies, practices and services affecting the wellbeing of children and young people. In undertaking these responsibilities I must have special regard for Aboriginal and Torres Strait Islander children and young people and for children and young people who are vulnerable or disadvantaged for any reason. I must regard the best interest of children and young people as my paramount consideration.

I am pleased to provide comments on the above consultation paper of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Commission), specifically the three matters on which submissions are sought by the Commission.

1. Best practice principles in responding to complaints

To respect and protect children and young people, and to provide opportunities for organisational improvement, it is vital that all organisations have complaints systems that are accessible and responsive to children and young people.

My office developed and released the *Are you listening? Guidelines for making complaints systems accessible and responsive to children and young people*¹ in 2009 and these were revised in 2013 and are available on my website at: <https://www.ccyp.wa.gov.au/our-work/resources/complaints-systems/>.

Caring for the future growing up today

These guidelines outline six key elements of a child-friendly complaints system

1. Focus on children and young people
2. Visibility
3. Accessibility
4. Responsiveness
5. Confidentiality
6. Accountability and continuous improvement

Organisations are encouraged in the guidelines to involve the children and young people they work with in developing a complaint process that will work well for them and examples of the practical initiatives undertaken by agencies are also available on the website.

My office conducted Complaints Monitoring Surveys in 2010, 2013 and 2015² to assess the accessibility and responsiveness of government agency complaints systems to children and young people, and the nature of complaints they received from and on behalf of children and young people. Results of these surveys can be found on my website.

The 2015 survey involved 32 agencies. Ninety per cent of agencies reported they had documented complaints policies and procedures. However, only 40 per cent of these policies and procedures explicitly identified children and young people. Nearly two thirds of agencies have at least some staff trained in working with children and young people, although it was in some cases ambiguous whether these staff were involved in taking complaints from children and young people. Just over 40 per cent of agencies provide some additional steps and support to encourage children and young people to make complaints..

The subject matter of complaints by children and young people varied, as would be expected from the range of agencies involved. Complaints generally related to matters including education, accommodation, health and recreation, reflecting similar concerns to the 2013 survey. Complaints included:

- Concerns about treatment by police, security personnel or custodial staff
- Disability access
- Age-related access to services and facilities
- Employment conditions, including wages and ages of children
- Updating of products and information

Of those organisations that contracted out services, just under half (44%) required the contracting organisation to establish a complaints system, while only three agencies included specific reference to children and young people. Four agencies required contracted organisations to report back on complaints from children and young people, and another agency stated that there was no formal requirement but there was constant dialogue between the agency and the organisation.

The survey results indicated that we have a long way to go across government and funded community services to be confident there are accessible and appropriate complaints systems in place for children. Children and young people are among the most vulnerable members of our community and we have a responsibility to ensure they know what to do when they have concerns about services they use, or as the work of the Commission highlights, what they can do to complain if they experience mistreatment or abuse.

Child-friendly complaint systems are essential to help to assist agencies in being more accessible and responsive to children and young people, and to ensure their concerns and needs are being listened to.

The six principles to strong and effective complaint responses outlined in section 3.1 of the Commission's consultation paper are excellent, as they focus particularly on complaints of sexual abuse and the vulnerability of children, which have not been articulated in more mainstream guidance on complaint handling. I fully support these six principles and the suggested topics of a complaint handling policy listed in section 3.2 which are detailed and importantly emphasise the importance of guidance on how to respond to children who make a complaint and the provision of support to the child or children involved.

I make three additional suggestions for topics within a complaint handling policy:

1) Keeping the child informed

It could be more clearly outlined that in any complaint policy it should be made clear who will provide ongoing information to the child/children involved in the complaint about what has happened with the complaint, the progress of the complaint, who else has been involved (e.g. police, other authorities) and the outcome of the complaint. This may have been implied in the dot points in 3.2 "support to be provided" or "communicate with stakeholders" however I think it should be more explicitly stated. An example of wording from our guidelines is "Give the child or young person the option to choose how and when they will be kept informed of the progress of the investigation into their complaint."³

2) Confidentiality

The issue of confidentiality is also significant for children and young people and concerns about confidentiality and privacy are often cited as reasons by children and young people for not making complaints or raising concerns they have. It is recommended that the suggested topics of any complaints handling policy include information about confidentiality. An example of wording from our guidelines is

"All complaints systems should treat complainant's information as confidential. Where children and young people are involved confidentiality becomes more complex particularly where the complaint involves concerns about the behaviour of another child or adult and allegations of abuse or harm. A complaint policy should:

- Ensure that appropriate policies and procedures are in place for dealing with confidentiality and consent issues when responding to a complaint from a child or young person.
- Ensure staff are trained in these policies and procedures and that the boundaries of confidentiality are clearly explained to children and young people at appropriate times throughout the complaints process.⁴ (p. 9)

3) Advocacy

Advocacy and support is defined by the Commission as “acting alongside, or on behalf of, victims and survivors of child sexual abuse to support their rights and interests while providing tangible and practical support.”⁵ Whilst support is mentioned in best practice principles for complaints processes – in 2 and 3 and in section 3.2, I would consider that advocacy should be mentioned within the best practice principles explicitly as advocacy (as well as support) is important for children and young people right from the beginning of their disclosure or ‘complaint’ and should continue and be as seamless as possible through any complaint, assessment, investigation and recovery processes.

2. Oversight of complaints handling – reportable conduct schemes

In Western Australia the Department for Child Protection and Family Support (the Department) have indicated with their *Building a Better Future: Out-of-Home Care Reform in Western Australia* April 2016 paper that “pending State Government approval and funding, the Department will explore a trial reportable conduct system for people working with children in out-of-home care. This may see an independent Reportable Conduct Unit:

- reviewing and quality assuring all investigations of child-related employee misconduct for organisations providing OOHHC, with the authority to recommend changes to investigation processes and outcomes; and
- recording and monitoring the names and outcomes of child-related employee misconduct.

As part of this, consideration will be given to the framework necessary so that a reportable conduct scheme may be linked to the *Working with Children (Criminal Record Checking) Act 2004*

Reform Action Number 68: Implement shared guidelines for responding to child-related employee misconduct. (Implementation timeframe July 2017)

Reform Action Number 69. Explore implementation of a trial reportable conduct system (pending Government approval). (Implementation timeframe to be determined).⁶)

It is my view that whilst the planned work of the Department to improve their policies and procedures (for managing safety and wellbeing concerns of a child or young person in the care of the Department, when the person alleged responsible is a Department or community sector, and to implement independent oversight of individual cases of child-related employee misconduct) is important, a reportable

conduct scheme should be developed to include all organisations that are involved in providing services to children and young people, not just the out of home care sector. A person who is found not suitable to work with children in an out of home care setting is very unlikely to be suitable to provide child care, out of school care or other services to children.

I consider a reportable conduct scheme should include

- oversight of all systems reporting and investigating the conduct by employees of government and nongovernment agencies and other public authorities that provide services to children
- consideration of any gaps within or across organisations or issues that prevent reporting
- review of systems for handling and responding to reportable allegations and reportable convictions
- connection to the Working with Children Check processes
- capacity to monitor investigations into abuse of children
- authority to respond to complaints from children and young people and/or their advocates about the process of investigation and outcomes particularly as these may involve multiple agencies and systems.

3. Advice and support for institutions

Improving access for organisations to advice and support about responding to complaints of child abuse including responding to complaints from children, concerns about staff behaviour and/or risk management is clearly required.

However in line with the work of the Commission on Child Safe Organisations (p. 5 Consultation paper) the need for advice and support for institutions extends beyond the area of child complaints, to child safety in general and the elements and strategies that increase safety.

My office has recently developed resources for Western Australia which include:

- *Child Safe Organisations WA: Guidelines*
- *Child Safe Organisations WA: Self-assessment and review tool*
- *Child Safe Organisations WA: Seminars*
- *Child Safe Organisations WA: In brief*
- *Feeling safe and respected wherever you are: Information for children and young people*

Organisations in WA are encouraged to use these resources to review and enhance their child safe and friendly strategies across their organisation and services. The resources developed in conjunction with a reference group of agency representatives aim to provide concise and practical information that assists implementation of child safe strategies and promotes cultural and behaviour change in organisations. Consideration was given to the large variety of organisations that provide services to children, types of services and size of organisations, and the need for education and

development of people within the organisations. The WA resources are based on nine domains of child safe organisations, which are very similar to the elements released by the Commission. The WA Domains are

1. Leadership, governance and culture
2. Empowering children to participate
3. Involving family and community
4. Child safe and friendly policies
5. Managing staff and volunteers
6. Safe environments physical and online
7. Child friendly complaint process and reporting
8. Education and development
9. Continuous improvement

In endeavouring to implement each of the nine domains it is evident that some organisations either due to size, lack of organisational awareness of child abuse or other factors, could greatly benefit from an accessible source of expertise in each of the nine domains and key areas that will impact implementation or child safe strategies across the domains such as:

- Participation and empowerment of children and young people
- Child abuse and neglect training
- Policy writing
- Responding to disclosures, allegations, complaints from children
- Risk management
- Organisational change and continuous improvement strategies

Domain 8 outlines some information that organisations should consider in the area of education and development needs of staff to support child safe strategies. "Child safe and friendly organisations will provide or source externally:

- education for staff and volunteers about the dynamics and indicators of child abuse
- education for staff and volunteers about child development, including child sexual development
- training opportunities that include safely exploring opinions and values and dealing with staff and volunteer feelings about child abuse
- training and development in how to be culturally responsive
- training and resources to support the participation of children and young people
- training and resources to support the participation of families and communities
- training about the process of disclosure and responding to children and young people that includes emotional support, safety considerations and reporting
- education about policies, procedures and reporting arrangements within the organisation and legal reporting obligations
- comprehensive and specific training for recruitment personnel, delivered by trainers with expertise relevant to the organisation

- training resources for participants that are accessible, evidence informed and reviewed regularly
- education and information for children, young people and parents and carers about child abuse, protective behaviours and online safety. While organisations may not be in a position themselves to provide this training or information, they may be well placed to advise parents of options available for themselves and their children and young people.”⁷

I support the Commissions work in identifying access to advice and support options for organisations and recommend that education and training opportunities are also key to establishing and maintaining knowledge and skills in organisations. Those providing these support services for organisations themselves need to be accountable for their resources and advice and ensure they are accessible, evidence informed and reviewed regularly.

Peak bodies whilst well placed to support their members with education, advice and support tailored to their service industries, in recent times in Western Australia have had their resourcing reduced and depleted which would preclude them from undertaking this function effectively without appropriate resourcing.

A combination of mechanisms is most likely to meet the diverse support needs of service providers in a large and expansive state such as Western Australia. Government agencies that fund services may need to be the default agency responsible for providing support to parts of the state i.e. regional and remote areas, where as peak bodies with resourcing may be about to service metropolitan or large regional communities.

Final consideration

An issue that has come to my attention in Western Australia with regard to complaints mechanisms has been that of language. The Hon. Peter Blaxell (the Special Inquirer) conducted the *St Andrew's Hostel Katanning Special Inquiry*⁸ and released the report on 3 August 2012 making 5 recommendations. Recommendation 2 provided for the establishment of a function to fulfil a child focussed, central complaints system for complaints concerning child abuse. Recommendation 2 can be broken down into three discreet functions:

- promoting or improving the likelihood of disclosure of child sexual or physical abuse
- management of initial reports/disclosures of such abuse by either a child or someone acting on a child's behalf, including the provision of advocacy and support
- oversight of the management of complaints of child sexual and physical abuse.

In my discussions with professionals in Western Australia, there is evident confusion of language as some people speak of complaints, reports, disclosures as the same or as one step/process/response, and others define them or refer to them as different, or

multiple processes. There is a lack of clarity and consistency across agencies about how they or others respond to children and young people specifically in any of the three function areas.

Furthermore, the issue of language and terms like complaints can be very confusing for children and young people, their families and the community. Children and young people tend to consider a 'complaint' as something that relates to the quality of a product or service, or to service accessibility or lack thereof, or to the way they are treated in general - for example whether someone was polite or rude, or demonstrated patient or impatient behaviour.

When a child or young person is not respected or is harmed or maltreated, they are encouraged through protective behaviours type programmes to "speak up" "tell someone you trust" "persist and get help." They are not taught to "lodge a complaint". With this in mind and informed by our consultation with children and young people in Western Australia⁹ within our Child Safe Organisations resources for WA we have produced an information sheet for children and young people entitled *Feeling Safe and Respected Wherever You Are*.¹⁰

The information sheet is designed as a resource for organisations to discuss the nine domains of child safe organisations, and their right to feeling safe and respected in the places they go to. These discussions should ideally include the ways in which the organisation seeks feedback from children and young people and how children and young people can complain and speak up. I have enclosed a copy of this information sheet with this letter, and hope that the Commission will consider in its work the issue of potential confusion of language amongst professionals, the community and children and young people with regard to complaints and include guidance about this in your work.

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

Yours sincerely



COLIN PETTIT

Commissioner for Children and Young People WA

27 April 2016

¹ Commissioner for Children and Young People WA 2013, *Are you listening? Guidelines for making complaints systems accessible and responsive to children and young people*, Commissioner for Children and Young People WA, Perth

² Commissioner for Children and Young People WA 2015, *Complaints Monitoring Survey* Commissioner for Children and Young People WA, Perth

³ Commissioner for Children and Young People WA 2013, *Are you listening? Guidelines for making complaints systems accessible and responsive to children and young people*, (p.9)

⁴ Ibid (p.9)

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse 2015, Issues Paper 10 *Advocacy and Support and Therapeutic Treatment Services* Commonwealth of Australia, Sydney.

⁶ Department for Child Protection and Family Support 2016. *Building a Better Future: Out-of-Home Care Reform in Western Australia* Government of Western Australia (p. 47)

⁷ Commissioner for Children and Young People WA (2016). *Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People WA, Perth (pp 25-26).

⁸ 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>

⁹ Commissioner for Children and Young People WA 2015, *Creating Child-Safe Organisations – Report on consultation with children and young people*, Commissioner for Children and Young People WA, Perth.

¹⁰ Commissioner for Children and Young People WA (2016). *Feeling Safe and Respected Wherever You Are ; Information for children and young people*, Commissioner for Children and Young People WA, Perth



Feeling Safe and Respected Wherever You Are

Information for children and young people

All organisations should be safe and friendly for children and young people.

You have the right to **be safe**, to **feel safe** and **be respected** wherever you are and whatever you do – at sport, clubs, churches, in out-of-home care, residential care, schools - everywhere!

What does 'safe and friendly' mean?



Children and young people have said they feel safe and welcome when:

- people care about you and respect you
- you feel included and people are kind to you
- no one is mean to you
- you are not hurt
- you know the rules or know how to find them out
- you have choices
- you can have fun and feel happy
- people listen to you
- you can talk to someone about any problems and they will help you solve them.

What if you or someone you know doesn't feel safe?



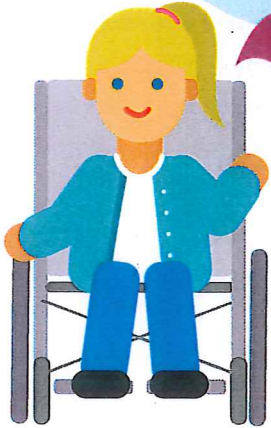
You always have the right to be safe and to feel safe, no matter where you are. If you don't feel safe talk to an adult you trust – like a parent, teacher, a friend's mum or dad or a leader at the place you go to.

If you are worried about yourself or someone you know and you don't know who to talk to, contact the Kids Helpline:



- Call **1800 55 1800** (it's free)
- Go to www.kidshelpline.com.au





It is the job of all adults who work at or visit an organisation to keep you safe

This is what they should do



Involve children and young people – ask what makes them feel welcome, respected and safe. Adults really listen and try to do what children and young people have said, or tell them why they can't.

Supervise activities and equipment (including phones, email and social media).

Make sure staff and volunteers are trustworthy – they should be friendly and qualified to work with children and young people.

Have leaders who make it happen – they take children and young people's safety seriously. The boss, the staff and volunteers work together with children and young people to make sure everyone feels safe, included and comfortable.

Involve parents and carers – talk to them about what is happening and invite them to activities or just to visit.

Always improve and look for ways to make things better for children and young people.

Train staff and volunteers about the best ways to help and support children and young people.

Have rules about the way things are done and how people should behave. Everyone knows the rules and what happens when the rules are not followed.

Have easy ways for children and young people to give feedback (or even complain!) Staff and volunteers should also report back to children and young people about what they did about their comments.

It's your right to be safe and respected everywhere

