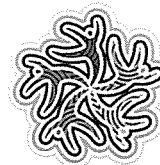


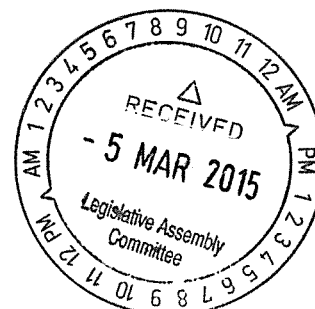


Commission for Children  
and Young People

improving young lives



24 February 2015  
CCYPD/15/113



Ms Lisa Baker, MLA  
Chair

Joint Standing Committee on the Commissioner for Children and Young People  
Parliament of Western Australia  
Parliament House  
PERTH WA 6000

Dear Ms Baker

Thank you for the opportunity to provide a submission to the Joint Standing Committee's *Inquiry into the functions exercised by the Commissioner for Children and Young People*.

I understand that the work of the Joint Standing Committee regarding functions of the Commissioner for Children and Young People has been informed by the *Review of the Commissioner for Children and Young People Act 2006* (the Review) and proposed legislative amendments recommended by the Review; with a particular focus on:

- 1) The manner in which the Commissioner's proposed child abuse complaints support function should operate
- 2) The impact the proposed child abuse complaints support function may have on the Commissioner's existing functions.

The Victorian Commission for Children and Young People (the Commission) is pleased to make the following comments for the consideration of the Joint Standing Committee (the Committee) on the Commissioner for Children and Young People.

For clarity, the Western Australian Commission/er for Children and Young People will be referred to as the WA Commission/er.

### **The Victorian context**

In November 2013, the Family and Community Development Committee of the Victorian Parliament (the Victorian Committee) tabled the report on its Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations (the Betrayal of Trust Inquiry). The Committee recommended that government build the capacity of organisations to be child safe by introducing minimum child safe standards for organisations that have direct and regular contact with children. It also recommended that government, working with the Commission and peak bodies, identify an effective approach for raising awareness and building capacity in non-government organisations for preventing child abuse.

The Betrayal of Trust Inquiry drew attention to a number of limitations in existing approaches to preventing and responding to child abuse within non-government organisations, including:

- an overreliance on the Working with Children Check and limited use of other prevention tools

- limited guidance to assist organisations to assess and mitigate risks specific to child abuse
- limited awareness within organisations of how to use regular supervision and performance management to identify concerns with the conduct of personnel
- limited awareness among many leaders and managers about how to create an organisational culture that will ensure children are reasonably protected from abuse
- inconsistencies in the child safety standards that apply to different sectors funded and regulated by government.

The previous Victorian Government committed to implementing all of the recommendations of the Betrayal of Trust inquiry and commenced work across three categories:

- Phase one - criminal law reform
- Phase two - creating child safe organisations
- Phase three- civil law reform

Of particular relevance to the Committee's work are strategies that help to protect children through strengthening the capacity of organisations to better prevent and respond to child abuse. Measures recommended by the Victorian Committee include:

- introducing minimum child safe standards for organisations engaged in child-related work, and providing support for organisations to meet the new standards requiring all Victorian government and non-government schools to have consistent policies in place for responding to child abuse allegations
- establishing a 'reportable conduct' scheme requiring certain organisations with a very high degree of responsibility for children to report allegations of abuse.

The Commission is awaiting confirmation of the newly elected Victorian Government's view regarding implementation of the Betrayal of Trust recommendations.

The Commission notes the large body of work undertaken by the New South Wales Ombudsman in the delivery of a reportable conduct scheme. This scheme is inextricably linked to child safe standards within organisations, as it seeks to act on allegations of inappropriate conduct or behaviour prior to a threshold of criminal charges. This work may be of great interest to the Committee.

### **Complaints mechanism as one part of child safe standards in organisations**

The Commission strongly supports the view that adopting child safe strategies within organisations is a vital preventative measure to protect children. One element of a comprehensive and integrated child safe policy is a complaints process. Overreliance on any one element, whether it be Working with Children Checks, or complaints mechanisms, does not support a holistic approach to improving child safety.

There is much work being done nationally at this time on child safety both due to, and leveraging from, the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

The Australian Children's Commissioners and Guardians (ACCG) has done considerable work in this area, resulting in a submission to the Royal Commission's *Issues Paper 3 – Child Safe Institutions*. The ACCG proposed in its submission the following:

*In broad terms, a 'child safe organisation' is one which consciously and systematically:*

- *creates conditions that reduce the likelihood of harm occurring to children and young people,*
- *creates conditions that increase the likelihood of any harm being discovered, and*

- *responds appropriately to any disclosures, allegations or suspicions of harm.*

This position indicates that child safety is not the result of a single element or activity and that a highly integrated, culturally embedded range of strategies are required to achieve best outcomes.

Responding to how child safe polices operate in practice, the ACCG's submission discussed specific components and proposed the following:

*'Examples of the ways in which 'child safe' policies and procedures can assist organisations to respond appropriately to any disclosures, allegations or suspicions of harm include:*

- *Clear and detailed triage procedures can provide clear guidance on how to respond to different types of complaints, allegations or reported suspicions (for example, whether the organisation should immediately contact police, or make a child protection report, or conduct an internal investigation).*
- *Complaint procedures which require a prompt response, and which require the organisation to report outcomes to the complainant, help build a sense of trust in the process, and make it more likely it will be trusted and accessible to others in future.'*

It is acknowledged that the work of the ACCG, and of many others, has as its origin the 2005 Community and Disability Services Ministers' Conference's National Framework – Creating Safe Environments for Children – Organisations, Employees and Volunteers<sup>1</sup> (the Framework) and the work of other organisations, such as Child Wise. The Framework is not prescriptive but aims to 'identify nationally agreed characteristics of a child safe organisation and promote best practice. The Framework includes a schedule on building the capacity of child safe organisations and provides information on complaints management and disciplinary processes. This information is delivered in the context that:

*'These elements acknowledge that building the capacity of organisations is a dynamic process involving a range of strategies.....'*

The learnings from the Royal Commissions' Interim Report<sup>2</sup> indicate that there is still a long way to go nationally to ensure consistent child safety within organisations, and that many organisations have yet to fully embrace the concept and have not acted with appropriate responsibility and rigour when reports of abuse or complaints of inappropriate actions have been made. The Royal Commission advises that children can assist in the design of reporting mechanisms and ways to help them feel safe. The benefit of teaching children how to raise concerns and make complaints, as part of an integrated child safe policy within an organisation, cannot be underestimated.

From my limited understanding of the inquiry into events at St Andrew's Hostel in Katanning, it is reasonable to believe that if robust and integrated child safe standards had been in place within the organisation, that were embraced, understood and expected by the community, they may have ameliorated risk to the children and young people who resided there and could have provided a clear structure to be followed if disclosures were

<sup>1</sup> Community and Disability Services Ministers' Conference, *National Framework – Creating Safe Environments for Children – Schedule 1 – Organisations, Employees and Volunteers*, CDSMC, Canberra, 2005, <http://www.ccyp.vic.gov.au/childsafetycommissioner/publications/childsafepubs.htm> (viewed 13 February 2015)

<sup>2</sup> Commonwealth of Australia, Royal Commission into Institutional Responses to Child Sexual Abuse June 2014 Roy [http://www.childabuseroyalcommission.gov.au/about-us/our-reports/interim-report-volume-1-final-020714\\_lr\\_web](http://www.childabuseroyalcommission.gov.au/about-us/our-reports/interim-report-volume-1-final-020714_lr_web)

made, thereby limiting the opportunity for an individual, or group of people, to dismiss or hide such disclosures.

### **Importance of not compromising other functions of the Commission**

It is noted that the *Commissioner for Children and Young People Act 2006* assigns fifteen functions to the WA Commissioner. According to the WA's Commission's website, the role of the WA Commissioner is described as:

*'The Commissioner is the independent advocate for all children and young people under 18 years of age in Western Australia. The Commissioner must always act in the best interests of children and young people with the aim of improving their wellbeing, and is dedicated to ensuring their voices are heard. She is required to give priority to the interests and needs of Aboriginal and Torres Strait Islander children and young people and to the vulnerable or disadvantaged.'*

The Review of the Commissioner for Children and Young People Act 2006 report states that the Premier had advised that the Commissioner's new functions may include, amongst others:

- assisting and supporting children and young people who may seek to make a complaint
- performing education and awareness raising in relation to the Commissioner's child abuse complaints functions
- promoting the receipt of complaints
- referring complaints to relevant authorities

The functions listed above incorporate operational as well as monitoring functions and potentially overlap with the role of other agencies, such as the Ombudsman. It is vital that the role of a Commission in advocating for children and young people is not compromised by a weighting and emphasis on a child abuse support function, particularly if this can be achieved by other agencies. Monitoring of the quality and accessibility of complaints processes appears to be consistent with the WA Commission's functions and would strengthen practice. Without specific and carefully constructed and articulated boundaries, there is a concern that a complaints support function could overwhelm other vital functions of the WA Commission.

Although legislative examination has not been undertaken, it is unclear what additional capacity under the legislation is required, e.g. power to conduct inquiries and obtain information to act, as section 19 specifically provides for the monitoring of complaints, trend analysis and the capacity to conduct inquiries:

- (d) to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint;
- (e) to monitor the trends in complaints made by children and young people to government agencies;
- (f) to initiate and conduct inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people;

### **Potential duplication**

It remains unclear at this time what the specific role of the WA Commission would be in undertaking a complaints support function that would not incorporate duplication with other agencies legislatively tasked with abuse and/or complaint investigation. There is a risk that the WA Commission becomes a further step in a complaints process, as it doesn't appear to have the power to act or investigate complaints made.

The role of advocating for children and young people, informing and educating the broader community, including children and young people, on disclosing abuse or making a complaint is a key focus of, and needs to remain with the WA Commission.

### **Ways to engage with children and young people**

The Commission uses a range of strategies to engage with children and young people; to learn from them about what makes them feel safe and well, and how services can be improved. These relationships also let us know how well child safety information is reaching this vulnerable cohort. As well as 'hearing' children and young people, the Commission benefits from this knowledge to inform its policy work regarding child safety.

Key initiatives include:

- **Independent Visitor Programs** – the Commission is privileged and aware of its level of responsibility in delivering three programs in this domain:
  - Youth Justice – the Commission recruits, trains and supports independent community volunteers to listen to young people in custody, support them to have their issues addressed, and identify ways to improve their experience whilst in custody.
  - Secure Welfare – Victoria has two 10-bed secure facilities for boys and girls, where strictly time limited placements are made to the need to protect them from severe and immediate risks to their safety. A pilot visitor Program scheme is currently in operation utilising Commission staff.
  - Residential Care – The Commission has recently commenced a pilot visitor scheme for residential care services within one region of metropolitan Melbourne. The scheme provides children and young people with a valuable opportunity to share their experiences and concerns in care and provides monitoring that is independent of the care system. The Commission is able to listen to the voices of children and young people and promote their interests, as well as advise the Minister for Families and Children on the performance of services provided to them.
- **Koorie Youth Reference Group** – The Commissioner for Aboriginal Children and Young People established this group, through the *Victorian Koorie Youth Council*, to provide a reference point for a range of topics, to support the Commissioner's informal community conversations.
- **Community Integration Program** – This program recruits community-based volunteers who support young people in residential care to create opportunities for greater community connectedness.
- **Charter for children and young people in residential care and a charter for young people in youth justice custody** – these charters, developed in consultation with children and young people and the Department of Health and Human Services assist in improving conditions and expectations of service delivery in facilities

### **Commissioner for Aboriginal Children and Young People**

It is with concern I note the recommendation of the Review that a Commissioner for Aboriginal Children and Young People is not supported; particularly given the vast overrepresentation of Aboriginal children and young people experiencing disadvantage. This includes those exposed to child protection and juvenile justice, together with the poor outcomes reported in *The Report on Government Services 2015*. This report noted that in 2013-2014 over half of the number of Aboriginal children admitted to care and protection orders were Aboriginal (908 non-Aboriginal children compared to 430 Aboriginal children).<sup>3</sup> *The Australian Institute of Health and Welfare Youth Detention Report 2014* notes a national increase in the overrepresentation of Indigenous youth in

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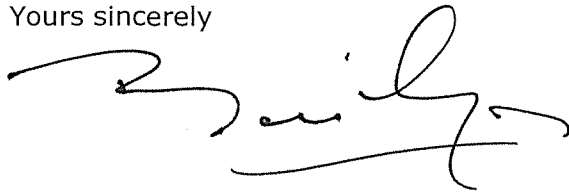
<sup>3</sup> Report on Government Services 2015 Table 15A.6

detention from 22 to 25<sup>4</sup> times the non-Indigenous rate. The Commission is of the view that this indicates the urgent need for specific advocacy by a Commissioner for Aboriginal Children and Young People.

In addition to this written submission, I would be pleased to answer any questions the Committee has, or to provide any further information you may require.

If you would like to discuss any of these issues in more detail, please contact myself on phone: (03) 8601 5886 or at [Bernie.Geary@ccyp.vic.gov.au](mailto:Bernie.Geary@ccyp.vic.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bernie Geary', with a stylized flourish at the end.

Bernie Geary OAM  
**Principal Commissioner**

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<sup>4</sup> AIHW. Youth Detention Population in Australia 2014. Figure 2.6