

FINAL REPORT

Improving institutional
responding and reporting



Royal Commission
into Institutional Responses
to Child Sexual Abuse

VOLUME 7

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Volume 7

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Content warning

This volume contains information about child sexual abuse that may be distressing. We also wish to advise Aboriginal and Torres Strait Islander readers that information in this volume may have been provided by or refer to Aboriginal and Torres Strait Islander people who have died.

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Preface

The Royal Commission

The Letters Patent provided to the Royal Commission required that it ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’. In carrying out this task, the Royal Commission was directed to focus on systemic issues, be informed by an understanding of individual cases, and make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs. The Royal Commission did this by conducting public hearings, private sessions and a policy and research program.

Public hearings

A Royal Commission commonly does its work through public hearings. We were aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission was to attempt that task, a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners accepted criteria by which Senior Counsel Assisting would identify appropriate matters for a public hearing and bring them forward as individual ‘case studies’.

The decision to conduct a case study was informed by whether or not the hearing would advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes so that any findings and recommendations for future change the Royal Commission made would have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing. In other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings were also held to assist in understanding the extent of abuse that may have occurred in particular institutions or types of institutions. This enabled the Royal Commission to understand the ways in which various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identified a significant concentration of abuse in one institution, the matter could be brought forward to a public hearing.

Public hearings were also held to tell the stories of some individuals, which assisted in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly, the devastating impact that it can have on people’s lives. Public hearings were open to the media and the public, and were live streamed on the Royal Commission’s website.

The Commissioners' findings from each hearing were generally set out in a case study report. Each report was submitted to the Governor-General and the governors and administrators of each state and territory and, where appropriate, tabled in the Australian Parliament and made publicly available. The Commissioners recommended some case study reports not be tabled at the time because of current or prospective criminal proceedings.

We also conducted some private hearings, which aided the Royal Commission's investigative processes.

Private sessions

When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands) would wish to tell us about their personal history of sexual abuse as a child in an institutional setting. As a result, the Australian Parliament amended the *Royal Commissions Act 1902* (Cth) to create a process called a 'private session'.

Each private session was conducted by one or two Commissioners and was an opportunity for a person to tell their story of abuse in a protected and supportive environment. Many accounts from these sessions are told in a de-identified form in this Final Report.

Written accounts allowed individuals who did not attend private sessions to share their experiences with Commissioners. The experiences of survivors described to us in written accounts have informed this Final Report in the same manner as those shared with us in private sessions.

We also decided to publish, with their consent, as many individual survivors' experiences as possible, as de-identified narratives drawn from private sessions and written accounts. These narratives are presented as accounts of events as told by survivors of child sexual abuse in institutions. We hope that by sharing them with the public they will contribute to a better understanding of the profound impact of child sexual abuse and may help to make our institutions as safe as possible for children in the future. The narratives are available as an online appendix to Volume 5, *Private sessions*.

We recognise that the information gathered in private sessions and from written accounts captures the accounts of survivors of child sexual abuse who were able to share their experiences in these ways. We do not know how well the experiences of these survivors reflect those of other victims and survivors of child sexual abuse who could not or did not attend a private session or provide a written account.

Policy and research

The Royal Commission had an extensive policy and research program that drew upon the findings made in public hearings and upon survivors' private sessions and written accounts, as well as generating new research evidence.

The Royal Commission used issues papers, roundtables and consultation papers to consult with government and non-government representatives, survivors, institutions, regulators, policy and other experts, academics, and survivor advocacy and support groups. The broader community had an opportunity to contribute to our consideration of systemic issues and our responses through our public consultation processes.

Community engagement

The community engagement component of the Royal Commission's inquiry ensured that people in all parts of Australia were offered the opportunity to articulate their experiences and views. It raised awareness of our work and allowed a broad range of people to engage with us.

We involved the general community in our work in several ways. We held public forums and private meetings with survivor groups, institutions, community organisations and service providers. We met with children and young people, people with disability and their advocates, and people from culturally and linguistically diverse communities. We also engaged with Aboriginal and Torres Strait Islander peoples in many parts of Australia, and with regional and remote communities.

Diversity and vulnerability

We heard from a wide range of people throughout the inquiry. The victims and survivors who came forward were from diverse backgrounds and had many different experiences. Factors such as gender, age, education, culture, sexuality or disability had affected their vulnerability and the institutional responses to the abuse. Certain types of institutional cultures and settings created heightened risks, and some children's lives brought them into contact with these institutions more than others.

While not inevitably more vulnerable to child sexual abuse, we heard that Aboriginal and Torres Strait Islander children, children with disability and children from culturally and linguistically diverse backgrounds were more likely to encounter circumstances that increased their risk of abuse in institutions, reduced their ability to disclose or report abuse and, if they did disclose or report, reduced their chances of receiving an adequate response.

We examined key concerns related to disability, cultural diversity and the unique context of Aboriginal and Torres Strait Islander experience, as part of our broader effort to understand what informs best practice institutional responses. We included discussion about these and other issues of heightened vulnerability in every volume. Volume 5, *Private sessions* outlines what we heard in private sessions from these specific populations.

Our interim and other reports

On 30 June 2014, in line with our Terms of Reference, we submitted a two-volume interim report of the results of the inquiry. Volume 1 described the work we had done, the issues we were examining and the work we still needed to do. Volume 2 contained a representative sample of 150 de-identified personal stories from people who had shared their experiences at a private session.

Early in the inquiry it became apparent that some issues should be reported on before the inquiry was complete to give survivors and institutions more certainty on these issues and enable governments and institutions to implement our recommendations as soon as possible. Consequently, we submitted the following reports:

- *Working With Children Checks* (August 2015)
- *Redress and civil litigation* (September 2015)
- *Criminal justice* (August 2017)

Definition of terms

The inappropriate use of words to describe child sexual abuse and the people who experience the abuse can have silencing, stigmatising and other harmful effects. Conversely, the appropriate use of words can empower and educate.

For these reasons, we have taken care with the words used in this report. Some key terms used in this volume are set out in Chapter 1, 'Introduction' and in the Final Report Glossary, in Volume 1, *Our inquiry*.

Naming conventions

To protect the identity of victims and survivors and their supporters who participated in private sessions, pseudonyms are used. These pseudonyms are indicated by the use of single inverted commas, for example, ‘Roy’.

As in our case study reports, the identities of some witnesses before public hearings and other persons referred to in the proceedings are protected through the use of assigned initials, for example, BZW.

Structure of the Final Report

The Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse consists of 17 volumes and an executive summary. To meet the needs of readers with specific interests, each volume can be read in isolation. The volumes contain cross references to enable readers to understand individual volumes in the context of the whole report.

In the Final Report:

The **Executive Summary** summarises the entire report and provides a full list of recommendations.

Volume 1, *Our inquiry* introduces the Final Report, describing the establishment, scope and operations of the Royal Commission.

Volume 2, *Nature and cause* details the nature and cause of child sexual abuse in institutional contexts. It also describes what is known about the extent of child sexual abuse and the limitations of existing studies. The volume discusses factors that affect the risk of child sexual abuse in institutions and the legal and political changes that have influenced how children have interacted with institutions over time.

Volume 3, *Impacts* details the impacts of child sexual abuse in institutional contexts. The volume discusses how impacts can extend beyond survivors, to family members, friends, and whole communities. The volume also outlines the impacts of institutional responses to child sexual abuse.

Volume 4, *Identifying and disclosing child sexual abuse* describes what we have learned about survivors’ experiences of disclosing child sexual abuse and about the factors that affect a victim’s decision whether to disclose, when to disclose and who to tell.

Volume 5, *Private sessions* provides an analysis of survivors' experiences of child sexual abuse as told to Commissioners during private sessions, structured around four key themes: experiences of abuse; circumstances at the time of the abuse; experiences of disclosure; and impact on wellbeing. It also describes the private sessions model, including how we adapted it to meet the needs of diverse and vulnerable groups.

Volume 6, *Making institutions child safe* looks at the role community prevention could play in making communities and institutions child safe, the child safe standards that will make institutions safer for children, and how regulatory oversight and practice could be improved to facilitate the implementation of these standards in institutions. It also examines how to prevent and respond to online sexual abuse in institutions in order to create child safe online environments.

Volume 7, *Improving institutional responding and reporting* examines the reporting of child sexual abuse to external government authorities by institutions and their staff and volunteers, and how institutions have responded to complaints of child sexual abuse. It outlines guidance for how institutions should handle complaints, and the need for independent oversight of complaint handling by institutions.

Volume 8, *Recordkeeping and information sharing* examines records and recordkeeping by institutions that care for or provide services to children; and information sharing between institutions with responsibilities for children's safety and wellbeing and between those institutions and relevant professionals. It makes recommendations to improve records and recordkeeping practices within institutions and information sharing between key agencies and institutions.

Volume 9, *Advocacy, support and therapeutic treatment services* examines what we learned about the advocacy and support and therapeutic treatment service needs of victims and survivors of child sexual abuse in institutional contexts, and outlines recommendations for improving service systems to better respond to those needs and assist survivors towards recovery.

Volume 10, *Children with harmful sexual behaviours* examines what we learned about institutional responses to children with harmful sexual behaviours. It discusses the nature and extent of these behaviours and the factors that may contribute to children sexually abusing other children. The volume then outlines how governments and institutions should improve their responses and makes recommendations about improving prevention and increasing the range of interventions available for children with harmful sexual behaviours.

Volume 11, *Historical residential institutions* examines what we learned about survivors' experiences of, and institutional responses to, child sexual abuse in residential institutions such as children's homes, missions, reformatories and hospitals during the period spanning post-World War II to 1990.

Volume 12, *Contemporary out-of-home care* examines what we learned about institutional responses to child sexual abuse in contemporary out-of-home care. The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in out-of-home care and, where it does occur, to help ensure effective responses.

Volume 13, *Schools* examines what we learned about institutional responses to child sexual abuse in schools. The volume examines the nature and adequacy of institutional responses and draws out the contributing factors to child sexual abuse in schools. It makes recommendations to prevent child sexual abuse from occurring in schools and, where it does occur, to help ensure effective responses to that abuse.

Volume 14, *Sport, recreation, arts, culture, community and hobby groups* examines what we learned about institutional responses to child sexual abuse in sport and recreation contexts. The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in sport and recreation and, where it does occur, to help ensure effective responses.

Volume 15, *Contemporary detention environments* examines what we learned about institutional responses to child sexual abuse in contemporary detention environments, focusing on youth detention and immigration detention. It recognises that children are generally safer in community settings than in closed detention. It also makes recommendations to prevent child sexual abuse from occurring in detention environments and, where it does occur, to help ensure effective responses.

Volume 16, *Religious institutions* examines what we learned about institutional responses to child sexual abuse in religious institutions. The volume discusses the nature and extent of child sexual abuse in religious institutions, the impacts of this abuse, and survivors' experiences of disclosing it. The volume examines the nature and adequacy of institutional responses to child sexual abuse in religious institutions, and draws out common factors contributing to the abuse and common failings in institutional responses. It makes recommendations to prevent child sexual abuse from occurring in religious institutions and, where it does occur, to help ensure effective responses.

Volume 17, *Beyond the Royal Commission* describes the impacts and legacy of the Royal Commission and discusses monitoring and reporting on the implementation of our recommendations.

Unless otherwise indicated, this Final Report is based on laws, policies and information current as at 30 June 2017. Private sessions quantitative information is current as at 31 May 2017.

Summary

This volume examines the reporting of child sexual abuse to external government authorities by institutions and their staff and volunteers, and how institutions have responded to complaints of child sexual abuse. It outlines guidance for how institutions should handle complaints, and the need for independent oversight of complaint handling by certain institutions.

This volume's recommendations aim to improve the reporting of child sexual abuse in institutional contexts to external authorities, enhance institutional complaint handling policies and procedures, and ensure implementation of nationally consistent reportable conduct schemes.

Reporting institutional child sexual abuse

Problems with reporting child sexual abuse

Our work has shown that institutional child sexual abuse has been widely under-reported to external government authorities in situations where the abuse was known or suspected. Under-reporting happened both in circumstances where the institutions and adults associated with the institution were obliged to report, and where they were not. Under-reporting can have profound and negative consequences.

We have identified four key problems with reporting institutional child sexual abuse. The first is that obligatory reporting models are not consistent. The second is that barriers exist for those who want to report child sexual abuse. The third is that the training, education and guidance that exists about reporting obligations – what to report and how to make a report – are inadequate. The fourth is that there are gaps in the legislative protections available to reporters.

Inconsistencies in obligatory reporting models

State and territory governments have taken different approaches to the three main obligatory reporting models operating in Australia – mandatory reporting (to child protection authorities), the creation of 'failure to report' offences (to police) and reportable conduct schemes. Variations in obligatory reporting models across jurisdictions mean that institutions have different obligations to externally report institutional child sexual abuse, depending on what sector and jurisdiction they operate in. These inconsistencies can result in varying levels of protection for children, under-reporting of known or suspected institutional child sexual abuse and ongoing challenges for institutions and their staff and volunteers. The evidence in our case studies suggested that, in the absence of legal obligations, many institutions and their staff and volunteers did not report abuse outside the institution, to the considerable detriment of the children concerned.

Barriers to reporting

Individuals face an array of obstacles and competing priorities when deciding whether to report known or suspected child sexual abuse. We refer to these difficulties as barriers to reporting.

Barriers to reporting may be institutional or personal, or a combination of both. In institutions that have closed and secretive cultures, where the preference is for complaints of child sexual abuse to be kept in-house, the institution's leadership, governance and culture can present significant barriers to reporting.

Barriers may also arise in institutional settings due to the fears and concerns of individual reporters. Individuals may experience considerable uncertainty and anxiety because identifying child sexual abuse is difficult. Often, the concerning behaviour is ambiguous and the abuse is hidden. Further, perpetrators may manipulate potential reporters so that they are slow to understand or believe what they are seeing or hearing. Concern about reporting can also arise because of the possible negative consequences of identifying a person as a potential child abuser.

The effect of these barriers can be to compromise the safety of children. When individuals are faced with barriers, the risk is that they will reframe, minimise and reinterpret what they are seeing to avoid concluding that they should report. We saw examples in our case studies where barriers to reporting resulted in failures to report, delayed reporting, or ineffectual or inappropriate reporting of child sexual abuse.

Lack of reporter training, education and guidance

A lack of training, education and guidance on reporting child sexual abuse has been consistently shown in the relevant literature. In our case studies, we learned that a lack of proper training, education and guidance on reporting has contributed to poor awareness and understanding on the part of adults associated with institutions about when and how to report to external authorities. This has led to under-reporting of abuse and increased the risk of harm to children.

Inadequate protections for reporters

There are gaps in legislative protections for reporters of child sexual abuse. These gaps relate to protection from civil and criminal liability, as well as protection from reprisals or other detrimental action. A lack of reporter protections can discourage both internal complaint making and external reporting.

Improving institutional reporting

The reporting of institutional child sexual abuse could be improved by working to make institutions more child safe. This would create a focus on child safety and stimulate a culture where the reporting of child sexual abuse is supported and facilitated. Education and training and policies and procedures could also be utilised to make sure adults associated with institutions understand and have sufficient guidance on their reporting requirements.

Reforms to obligatory reporting models are also needed to improve reporting. We are satisfied that institutions, their staff and volunteers should be legally obliged to report institutional child sexual abuse to an external authority under at least one obligatory reporting model discussed in this volume. For obligatory reporting to work effectively, obligations should be consistent across jurisdictions and the individuals who are obliged to report must be adequately protected when they do so. Reforms to laws concerning mandatory reporting to child protection authorities and reportable conduct schemes are considered in this volume. Requirements for the reporting of offences to police have been considered separately in our *Criminal justice* report.

Mandatory reporting to child protection authorities

In our view, improving reporting of institutional child sexual abuse requires changes to laws concerning mandatory reporting to child protection authorities and enhancements to the training, education and guidance provided to mandatory reporters.

Training, education and guidance

The training, education and guidance provided to mandatory reporters is lacking in many institutional settings. In our view, where the government obliges individuals to carry out a reporting duty, it should ensure those individuals are provided with adequate assistance and support to effectively discharge the duty.

We recommend that state and territory governments that do not have a mandatory reporter guide should introduce such a guide and require its use by mandatory reporters. We also recommend that institutions and state and territory governments provide mandatory reporters with access to experts who can provide timely advice on child sexual abuse reporting obligations (see Recommendations 7.1 and 7.2).

Reporter groups

In our view, individuals who work closely with children should be obliged to report child sexual abuse to an external government authority. For adults who work or volunteer in institutions, reporting risks of harm to a child protection authority is a sensible reporting pathway because it is not always clear where abuse is occurring (for example, in the home or in an institutional setting, or both).

We recommend (see Recommendation 7.3) that state and territory governments amend laws concerning mandatory reporting to child protection authorities so that, at a minimum, the following groups of individuals are included as mandatory reporters (in addition to the four occupations already designated in each jurisdiction – doctors, nurses, teachers and the police):

- out-of-home care workers (excluding foster and kinship/relative carers)
- youth justice workers
- early childhood workers
- registered psychologists and school counsellors
- people in religious ministry.

One of the benefits of this recommendation is that more individuals who work closely with children – and who therefore have a moral and professional imperative to report known or suspected child abuse and neglect to an external government authority – would be both obliged to report and protected in making a report to child protection.

We also recommend that laws concerning mandatory reporting to child protection authorities do not exempt persons in religious ministry from being required to report knowledge or suspicions formed in whole or in part on the basis of information disclosed in or in connection with a religious confession (see Recommendation 7.4).

Extensions to mandatory reporter groups should be part of a reinvigorated broader initiative towards achieving consistency in mandatory reporting laws.

Strengthening reporter protections

Strengthening legislative protection for those making complaints or reports is important to ensure that child sexual abuse in institutional contexts is identified and responded to adequately. Reporters in good faith should be reassured that the law will protect them. Further, where individuals are legally obliged to report – for example, under laws concerning mandatory reporting to child protection authorities – it is only appropriate that they be protected from adverse consequences.

In our view, governments should address gaps in the existing legislative protection for individuals who make reports about child sexual abuse. This includes gaps in relation to mandatory and voluntary reports to child protection authorities under child protection legislation, and notifications concerning child abuse under the Health Practitioner Regulation National Law (see Recommendation 7.5).

Gaps in protection for individuals making internal complaints are of particular relevance to child sexual abuse in institutions. It is important that where institutions respond inadequately or improperly to incidents or allegations of child sexual abuse, those within an institution who become aware of these problems report them.

In our view, building on child protection legislation is the simplest and most direct means to extend protection to individuals making internal complaints relating to child sexual abuse. We recommend that child protection legislation provides adequate protection for individuals who make complaints or reports to any institution that engages in child-related work about child sexual abuse in that institution, or the response of that institution to child sexual abuse (see Recommendation 7.6).

Improving institutional responses to complaints

Understanding complaint handling

A ‘complaint’ includes any allegation, suspicion, concern or report of a breach of the institution’s code of conduct. It also includes disclosures made to an institution that may be about, or relate to, child sexual abuse in an institutional context.

A complaint can be made by anyone – including a child, adult survivor, parent, trusted adult, independent support person, staff member, volunteer or community member. A complaint may be made about an adult allegedly perpetrating child sexual abuse or about a child exhibiting harmful sexual behaviours. Institutions may receive complaints directly or through a redress scheme.

Common problems with institutional complaint handling

Our case studies, private sessions and research revealed many common problems with institutions’ responses to complaints of child sexual abuse. We heard that some institutions had not developed or implemented clear and accessible complaint handling policies and procedures that could guide them on how to respond to complaints. Our case studies revealed numerous instances where institutions ignored or minimised complaints, engaged in poor investigation standards, and did not assess and manage risks to the safety of children in their care. The mishandling of complaints has meant that some allegations of child sexual abuse were not properly investigated and children were not adequately protected.

Improving complaint handling by being child safe

Institutions can improve complaint handling by implementing the 10 Child Safe Standards recommended in Volume 6, *Making institutions child safe*. Standard 6 focuses on institutional complaint processes. However, all the standards should inform an institution's complaint handling process, and its policy and procedures, to create an environment where children, families, volunteers and staff feel empowered to raise complaints and these complaints are taken seriously.

Child-focused complaint policies and procedures

A child-focused complaint process is important for helping children and others in institutions make complaints. Child safe institutions have in place a child-focused complaint handling system that is understood by children, staff, volunteers and families.

Institutions that provide services to or engage with children are diverse and vary in almost every characteristic – size, resources, workforce, location, regulatory context and the degree of risk they pose to children. This means that not all institutions can adopt the same complaint handling policies and procedures. Each institution needs to develop policies and procedures that reflect its own context. Complaint handling policies and procedures also differ according to the laws that apply in each jurisdiction in areas such as reporting obligations, employment law, privacy and victims' rights. Government agencies or peak bodies could help smaller institutions by supplying complaint handling policy templates, which can then be tailored to suit the sector and/or institution involved.

We recommend that institutions have clear, accessible and child-focused complaint handling policies and procedures that set out how they should respond to complaints of child sexual abuse (see Recommendation 7.7). The complaint handling policies and procedures should cover:

- making a complaint
- responding to a complaint
- investigating a complaint
- providing support and assistance
- achieving systemic improvements following a complaint.

Making a complaint

An institution's complaint handling policy and procedure should explain how a complaint can be made within the institution. Institutions should establish mechanisms for children and adults in the institution to make a complaint. These mechanisms should be designed to suit those who could raise a complaint, including children, families and staff. Complaint mechanisms should be confidential, accessible and culturally appropriate.

Leaders of institutions should actively encourage children, staff, volunteers and others associated with the institution to make a complaint when they encounter actual abuse or potentially concerning behaviours, and make sure they are supported in doing so.

Behaviours that could be the subject of a complaint

Typically, three categories of behaviour might be the subject of a complaint of child sexual abuse:

- concerning conduct – behaviours, or patterns of behaviour, that are a risk to the safety of children. This also refers to ambiguous behaviours that are potentially inappropriate for children to be exposed to
- misconduct – behaviours that constitute a breach of the institution's code of conduct
- criminal conduct – conduct that, if proven, would constitute a criminal offence.

Code of conduct

A code of conduct establishes a common understanding of the standards of behaviour expected of staff and volunteers (including senior leaders and board members). As part of an institution's governance framework, it serves to facilitate child safe outcomes for the children in an institution's care.

We recommend that institutions that deal with children should have a clear code of conduct that:

- outlines behaviours towards children that the institution considers unacceptable
- includes a specific requirement to report any concerns, breaches or suspected breaches of the code to a person responsible for handling complaints in the institution, or to an external authority when required by law and/or the institution's complaint handling policy
- outlines the protections available to individuals who make complaints or reports in good faith (see Recommendation 7.8).

Supporting children to communicate a complaint

When concerns about child sexual abuse arise, no matter how they arise, institutions should support victims or other children making complaints. This requires the institution to be proactive and understand the particular needs and circumstances of children in their care.

Children, especially younger children, may not complain by following a formal complaint process. Children may instead make a verbal or non-verbal disclosure of sexual abuse. Children with disability may make non-verbal disclosure of sexual abuse via behaviours and/or physical signals.

Appropriate support to communicate a complaint, such as communication aids, language translators or provision of culturally competent staff who can work with children from culturally diverse backgrounds, enables the substance of a complaint to be heard and understood by the institution.

Responding to a complaint

Any complaint of child sexual abuse in an institution must be taken seriously. Institutions should take a proportionate approach to responding to complaints. For example, the urgency of response to a disclosure of current sexual abuse of a child would be different from the response to a complaint of historical abuse where the alleged perpetrator is deceased.

Assigning responsibility for responding

Institutions are made accountable if responsibility for responding to complaints is clearly and transparently assigned to a dedicated person. An institution should specify the individual or individuals who will:

- be told of the complaint within the institution
- be responsible for handling the complaint (if the person is different from who will be told of the complaint)
- oversee the investigation
- maintain a complaints register.

Assessing risks and establishing safeguards

When a complaint has been made, the institution should assess the risks associated with the complaint and implement necessary safeguards. Assessment of risk should be continual – beginning when the complaint is initially made and continuing as the complaint is being investigated.

Investigating a complaint

Institutions should make every effort to investigate complaints of child sexual abuse to determine:

- whether a person has breached the institution's code of conduct or another institutional or oversight body's policy or procedure
- whether they pose a risk to children's safety
- what action if any is required.

This sort of investigation examines the circumstances of the complaint to determine all relevant facts and establish a documented basis for a decision (that is, whether the complaint is or is not substantiated).

The investigation should be carried out by an impartial, objective and trained investigator. The investigator may be an employee of the institution, a contractor or independent of the institution. Some institutions may use a combination of internal investigation resources and external investigators.

The investigation should be undertaken in a way that is proportionate to the seriousness, frequency of occurrence and severity of the complaint.

Where the conduct associated with the complaint has been reported to the police, institutions should consult the police before starting their own investigation to make sure they do not compromise any criminal investigation.

Procedural fairness

Institutions should comply with the requirements of procedural fairness when investigating a child sexual abuse complaint and determining outcomes. By observing procedural fairness, an institution manages risk properly, ensures that it responds in a manner that is fair to affected parties and minimises the prospect that its decisions might be challenged. A complaint handling policy should specify steps that will be taken to comply with the requirements of procedural fairness for both the victim and the subject of a complaint.

Documenting the complaint and investigation

Institutions should be aware of legal, contractual, professional and other obligations to document complaint handling, maintain records and provide access to those records. Institutions should provide that all steps taken in the complaint handling process are documented.

Implementing outcomes

After the investigation has been completed, the institution should:

- decide the outcome of the complaint
- advise the victim and/or complainant of the outcome
- advise the person who was the subject of the complaint of the outcome
- provide ongoing support, including any necessary assistance required from the institution itself, and access to advocacy, support and therapeutic treatment services, and a safety plan for the complainant and family
- once a complaint of child sexual abuse has been substantiated, and the complaint process has concluded, refer to its redress policy and consider the relevant next steps (see our *Redress and civil litigation* report)
- inform relevant agencies as required, for example, the ombudsman or children's guardian
- advise those in the community affected by the conduct.

Providing support and assistance

Concern and support for the person who is making a complaint about child sexual abuse must be at the heart of an institution's response. Support is required throughout all stages of the complaint process – from the time of disclosure or the initial complaint until after any investigation has been completed and the complaint finalised. Support may include the provision of advocacy or therapeutic treatment services.

Achieving systemic improvements following a complaint

The creation of a child safe environment requires vigilance and necessitates paying attention to systemic issues. A complaint of child sexual abuse could indicate wider systemic child safety issues within an institution, or that there may be deficiencies in its child safe approach.

Institutions should undertake a careful and thorough review of the initial complaint at the earliest opportunity, and then review the complaint outcome, to identify:

- the root cause of the problem
- any systemic issues, including failures
- remaining institutional risks.

Oversight of institutional complaint handling

The need for independent oversight

In our view, independent oversight is important in addressing some problems with institutional complaint handling, such as conflicts of interest that can arise when institutions investigate their own staff and volunteers. Independent oversight is beneficial because it helps to:

- increase identification and reporting of institutional child sexual abuse
- improve the capacity of institutions to receive and respond to complaints
- strengthen institutions' accountability and transparency in accordance with best practice complaint handling
- ensure the risk of child sexual abuse is adequately addressed
- improve the welfare and wellbeing of primary and secondary victims
- promote consistent standards in reporting and responding across institutions.

Independent oversight can assure the public that the institutions entrusted to care for children cannot minimise or ignore complaints, and that the leaders and employees of these institutions cannot operate with impunity.

Oversight through nationally consistent reportable conduct schemes

In Australia, a reportable conduct scheme is the only model for independent oversight of institutional responses to complaints of child abuse and neglect across multiple sectors. Such schemes oblige heads of certain institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees. The schemes also oblige the oversight body to monitor institutions' investigation and handling of allegations. The only reportable conduct scheme in full operation during the period of this inquiry was in New South Wales. Schemes began in July 2017 in Victoria and the Australian Capital Territory.

State and territory governments have a unique opportunity to achieve national consistency in reportable conduct schemes by using the New South Wales scheme as a model – as Victoria and the Australian Capital Territory have already done.

We recommend that state and territory governments establish nationally consistent legislative reportable conduct schemes, based on the approach adopted in New South Wales (see Recommendation 7.9).

In our view, the potential benefits of nationally consistent implementation of reportable conduct schemes are significant. Implemented on this basis, reportable conduct schemes could:

- remove any advantage to potential offenders of travelling to jurisdictions that do not have a reportable conduct scheme
- contribute to the equal protection of children from child sexual abuse in institutions regardless of their circumstances and geographic location
- allow for collection and analysis of national data on institutional child abuse and neglect
- provide a level of uniformity for institutions operating across jurisdictions for responding to, reporting, and oversight of, complaints, which would allow national institutions to standardise complaint handling policies and procedures
- address some of the issues that arise from employee mobility between jurisdictions – for example, a nationally consistent approach would allow institutions to give employees consistent training in complaint handling and reduce the administrative burden and the need for employees to learn new requirements when they move interstate

- have desirable flow-on benefits for other regulatory systems, such as the Working With Children Checks system, carers' registers and teacher or other professional registers, including through sharing of information and experience
- support the implementation of other recommendations that we have made – particularly on Child Safe Standards, complaint handling, Working With Children Checks and information sharing.

Key elements of reportable conduct schemes

There are some elements of reportable conduct schemes that should be consistent across all jurisdictions for the schemes to operate effectively. We recommend (see Recommendation 7.10) that reportable conduct schemes provide for the following key elements:

- Independent oversight – the oversight body under a reportable conduct scheme should be independent of government and of the institutions whose operations it monitors.
- Obligatory reporting by heads of institutions – reportable conduct schemes should oblige heads of institutions to notify the oversight body of any reportable allegation, conduct or conviction in a timely and consistent manner.
- Inclusion of sexual misconduct as reportable conduct – reportable conduct schemes should require the reporting of conduct by employees that is broader than conduct that would constitute a criminal offence. Under existing reportable conduct legislation, reportable conduct includes both sexual offences and 'sexual misconduct'.
- Inclusion of historical conduct – reportable conduct schemes should not place a time limit on when the conduct occurred in order for it to be reportable. Reportable conduct should include the historical conduct of any existing employee of an institution, as well as current or recent conduct.
- Coverage of employees, volunteers and contractors – reportable conduct schemes should require the reporting of conduct by any individual engaged by an institution to provide services to children, whether or not they are a paid employee.
- Protections for persons making reports – reportable conduct schemes should protect those who inform the head of an institution or the oversight body about reportable conduct so as to encourage reporting and an institutional culture that is committed to the scheme.
- Powers and functions of the oversight body – the oversight body that administers a reportable conduct scheme should have a core range of powers to enable the effective monitoring of institutional complaint handling, and to ensure that institutions are held accountable for their actions. These powers should include those relating to: scrutinising institutional complaint handling systems; monitoring investigations and handling of allegations; own motion investigations; class and kind agreements; capacity building and practice development; and public reporting.

Provision for review of schemes

Regular review of reportable conduct schemes is important. Experience in New South Wales shows that schemes need to adapt to changing dynamics and new challenges relevant to employee-related child abuse. We recommend that state and territory governments should periodically review the operation of reportable conduct schemes, including to determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse (see Recommendation 7.11).

Scope of reportable conduct schemes

We believe regulation and oversight should be consistent, balanced and proportionate to an institution's risk, in order to avoid placing unnecessary or excessive regulatory burden on institutions and government.

Our starting point is that the handling of child sexual abuse complaints should only be subject to the oversight of a reportable conduct scheme where institutions:

- exercise a high degree of responsibility for children
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.

At a minimum, these should include institutions that provide:

- accommodation and residential services for children
- activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- childcare services
- child protection services and out-of-home care
- disability services and supports for children with disability
- education services for children
- health services for children
- justice and detention services for children (see Recommendation 7.12.).

Recommendations

The following is a list of the recommendations made in this volume.

Reporting institutional child sexual abuse (Chapter 2)

Recommendation 7.1

State and territory governments that do not have a mandatory reporter guide should introduce one and require its use by mandatory reporters.

Recommendation 7.2

Institutions and state and territory governments should provide mandatory reporters with access to experts who can provide timely advice on child sexual abuse reporting obligations.

Recommendation 7.3

State and territory governments should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, state and territory governments should also include the following groups of individuals as mandatory reporters in every jurisdiction:

- a. out-of-home care workers (excluding foster and kinship/relative carers)
- b. youth justice workers
- c. early childhood workers
- d. registered psychologists and school counsellors
- e. people in religious ministry.

Recommendation 7.4

Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.

Recommendation 7.5

The Australian Government and state and territory governments should ensure that legislation provides comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts. Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report, including in relation to:

- a. mandatory and voluntary reports to child protection authorities under child protection legislation
- b. notifications concerning child abuse under the Health Practitioner Regulation National Law.

Recommendation 7.6

State and territory governments should amend child protection legislation to provide adequate protection for individuals who make complaints or reports in good faith to any institution engaging in child-related work about:

- a. child sexual abuse within that institution or
- b. the response of that institution to child sexual abuse.

Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report.

Improving institutional responses to complaints (Chapter 3)

Recommendation 7.7

Consistent with Child Safe Standard 6: Processes to respond to complaints of child sexual abuse are child focused, institutions should have a clear, accessible and child-focused complaint handling policy and procedure that sets out how the institution should respond to complaints of child sexual abuse. The complaint handling policy and procedure should cover:

- a. making a complaint
- b. responding to a complaint
- c. investigating a complaint
- d. providing support and assistance
- e. achieving systemic improvements following a complaint.

Recommendation 7.8

Consistent with Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture, institutions should have a clear code of conduct that:

- a. outlines behaviours towards children that the institution considers unacceptable, including concerning conduct, misconduct or criminal conduct
- b. includes a specific requirement to report any concerns, breaches or suspected breaches of the code to a person responsible for handling complaints in the institution or to an external authority when required by law and/or the institution's complaint handling policy
- c. outlines the protections available to individuals who make complaints or reports in good faith to any institution engaging in child-related work (see Recommendation 7.6 on reporter protections).

Oversight of institutional complaint handling (Chapter 4)

Recommendation 7.9

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

Recommendation 7.10

Reportable conduct schemes should provide for:

- a. an independent oversight body
- b. obligatory reporting by heads of institutions
- c. a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child
- d. a definition of reportable conduct that includes the historical conduct of a current employee
- e. a definition of employee that covers paid employees, volunteers and contractors
- f. protection for persons who make reports in good faith
- g. oversight body powers and functions that include
 - i. scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions
 - ii. monitoring the progress of investigations and the handling of complaints by institutions

- iii. conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware
- iv. power to exempt any class or kind of conduct from being reportable conduct
- v. capacity building and practice development, through the provision of training, education and guidance to institutions
- vi. public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

Recommendation 7.11

State and territory governments should periodically review the operation of reportable conduct schemes, and in that review determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse.

Recommendation 7.12

Reportable conduct schemes should cover institutions that:

- exercise a high degree of responsibility for children
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.

At a minimum, these should include institutions that provide:

- a. accommodation and residential services for children, including
 - i. housing or homelessness services that provide overnight beds for children and young people
 - ii. providers of overnight camps
- b. activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- c. childcare services, including
 - i. approved education and care services under the Education and Care Services National Law
 - ii. approved occasional care services

- d. child protection services and out-of-home care, including
 - i. child protection authorities and agencies
 - ii. providers of foster care, kinship or relative care
 - iii. providers of family group homes
 - iv. providers of residential care
- e. disability services and supports for children with disability, including
 - i. disability service providers under state and territory legislation
 - ii. registered providers of supports under the National Disability Insurance Scheme
- f. education services for children, including
 - i. government and non-government schools
 - ii. TAFEs and other institutions registered to provide senior secondary education or training, courses for overseas students or student exchange programs
- g. health services for children, including
 - i. government health departments and agencies, and statutory corporations
 - ii. public and private hospitals
 - iii. providers of mental health and drug or alcohol treatment services that have inpatient beds for children and young people
- h. justice and detention services for children, including
 - i. youth detention centres
 - ii. immigration detention facilities.

1 Introduction

1.1 Overview

Volume 7, *Improving institutional responding and reporting* examines the obligations of institutions and their employees or volunteers to report child sexual abuse in institutional contexts to external government authorities. It includes recommendations on mandatory reporting to child protection authorities. It also includes recommendations to strengthen legislative protections for individuals who make complaints or reports about institutional child sexual abuse.

The volume discusses effective complaint handling and responding, which is an essential standard of a child safe institution. We also examine past problems with institutional responses to child sexual abuse complaints. Consideration is then given to improving complaint handling, through the lens of our work on making institutions child safe. We recommend that institutions should have a clear, accessible and child-focused complaint handling policy and procedure that establishes how the institution responds to complaints of child sexual abuse.

The volume also examines oversight of institutional complaint handling. It considers reportable conduct schemes as a best practice model for cross-sector oversight of institutional handling of employee-related child protection matters. We recommend that reportable conduct schemes be established in every Australian state and territory.

1.2 Terms of Reference

The Letters Patent establishing the Royal Commission required that it ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’ and set out the Terms of Reference of the inquiry.

In carrying out this task, we were directed to focus on systemic issues, informed by an understanding of individual cases. We were required to make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

This volume particularly addresses the Terms of Reference that required us to inquire into:

- what institutions and governments should do to better protect children against sexual abuse and related matters in institutional contexts in the future
- what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts
- what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse
- the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts
- changes to laws, policies, practices and systems that have over time improved the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.¹

1.3 Links with other volumes

This volume, along with Volume 6, *Making institutions child safe* and Volume 8, *Recordkeeping and information sharing*, recommend a national approach to making institutions child safe.

Together, these volumes explain how institutions could be made safer for children by better preventing, identifying, responding to and reporting institutional child sexual abuse. Recognising that protecting children is everyone's responsibility, they look at the role communities, institutions, government, individuals and a range of other actors could play to create child safe institutions.

The three volumes recommend independent but interrelated initiatives to create child safe institutions.

Volume 6 recommends a national community prevention strategy; the implementation of Child Safe Standards for institutions, supported by improved regulatory oversight and practice; and initiatives that could help institutions to prevent online child sexual abuse and respond appropriately if it does occur.

This volume recommends measures to improve institutional responses to complaints of child sexual abuse; the identification of unacceptable or concerning behaviours within institutions; obligatory reporting of child sexual abuse; and the oversight of institutional complaint handling and investigation.

Volume 8 recommends best practice principles for institutional records and recordkeeping, and improved information-sharing arrangements, including an information exchange scheme for prescribed bodies.

The recommendations in the three volumes aim to:

- reduce the risk of community and institutional child sexual abuse
- drive cultural change in communities and institutions so that all institutions put the best interests of children first and at the heart of their purpose and operation
- build a nationally consistent approach to making institutions child safe
- enable the community, parents and children to expect and demand institutions to be child safe and hold institutions to account for the safety of children in their care
- through improved reporting practices, enable governments to better identify and intervene in institutions that pose significant risk to children.

While Volumes 6, 7 and 8 address how *all* institutions could be made child safe, Volumes 11 to 16 consider child safety in particular institutional settings.

1.4 Key terms

The inappropriate use of words to describe child sexual abuse and the people who experience the abuse can have silencing, stigmatising and other harmful effects. Conversely, the appropriate use of words can empower and educate.

For these reasons, we have taken care with the words used in this report. Some key terms used in this volume are set out below. A complete glossary is contained in Volume 1, *Our inquiry*.

Children with harmful sexual behaviours

We use the term ‘children with harmful sexual behaviours’ to refer to children under 18 years who have behaviours that fall across a spectrum of sexual problems, including those that are problematic to the child’s own development, as well as those that are coercive, sexually aggressive and predatory towards others. The term ‘harmful sexual behaviours’ recognises the seriousness of these behaviours and the significant impact they have on victims, but is not contingent on the age or capacity of a child.

Child safe institutions/child safe organisations

‘Child safe institutions’ create cultures, adopt strategies and take action to prevent harm to children, including child sexual abuse. The Australian Children’s Commissioners and Guardians (ACCGs) define a child safe institution as one that consciously and systematically:

- creates conditions that reduce the likelihood of harm to children
- creates conditions that increase the likelihood of identifying and reporting harm
- responds appropriately to disclosures, allegations or suspicions of harm.

Child sexual abuse

The term ‘child sexual abuse’ refers to any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography. It includes child grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child’s inhibitions in preparation for sexual activity with the child.

Complaint

A ‘complaint’ includes any allegations, suspicions, concerns or reports of a breach of the institution’s code of conduct. It also includes disclosures made to an institution that may be about or relate to child sexual abuse in an institutional context.

A complaint may be made about an adult allegedly perpetrating child sexual abuse or about a child exhibiting harmful sexual behaviours. It can be received in writing, verbally, or be the result of other observations, including behavioural indicators.

We recognise the term complaint is used differently by some institutions. For example, instead of complaint, institutions have encouraged people to ‘speak up’ about their concerns, referred to both ‘complaints or concerns’, or used the term ‘allegation’.

Complaint handling

‘Complaint handling’ encompasses the development and implementation of policies, procedures, systems and processes for responding to complaints of child sexual abuse.

Disclosure

‘Disclosure’ is the process by which a child conveys or attempts to convey that they are being or have been sexually abused, or by which an adult conveys or attempts to convey that they were sexually abused as a child.²

This may take many forms, and might be verbal or non-verbal.³ Non-verbal disclosures using painting or drawing, gesticulating, or through behavioural changes, are more common among young children and children with cognitive or communication impairments.⁴ Children, in particular, may also seek to disclose sexual abuse through emotional or behavioural cues, such as heightened anxiety, withdrawal or aggression.

Information sharing/information exchange

We use the terms ‘information sharing’ and ‘information exchange’ to refer to the sharing or exchange of information, including personal information about, or related to, child sexual abuse in institutional contexts. The terms refer to the sharing of information between (and, in some cases, within) institutions, including non-government institutions, government and law enforcement agencies, and independent regulator or oversight bodies. They also refer to the sharing of information by and with professionals who operate as individuals to provide key services to or for children.

Investigation

The term ‘investigation’ refers to the process of inquiry that begins after a complaint has been received by an institution. In this volume, the term does not refer to a police investigation; rather it is a process conducted by or on behalf of the institution associated with the complaint.

Prior to commencing an investigation an institution should perform a risk assessment. Institutions must also assess whether there are any legislative, contractual or other requirements to report to an individual or agency, or to conduct the investigation in a prescribed manner before commencing an investigation.

Institutions are responsible for ensuring that investigations are completed in accordance with prescribed requirements.

Mandatory reporter/mandatory reporting

A 'mandatory reporter' is a person who is required by either state or territory legislation to report known and suspected cases of child abuse and neglect to a nominated government department or agency (typically the child protection authority).

'Mandatory reporting' refers to where a legislative requirement is placed on an individual to report known and suspected cases of child abuse and neglect to a nominated government department or agency (typically the child protection authority).

Perpetrator

We use the term 'perpetrator' to describe an adult who has sexually abused a child.

Police investigation

A 'police investigation' is a process of inquiry conducted by the police, after receiving a report of alleged child sexual abuse, to determine whether a criminal offence may have been committed.

Record

A 'record' refers to information created, received, and maintained as evidence and/or as an asset by an organisation or person, in pursuance of legal obligations or in the transaction of business or for its purposes, regardless of medium, form or format.

Report

A 'report' refers to where concerns relating to child sexual abuse are notified to an authority or agency external to the institution – for example, where a person or institution notifies the police, a child protection agency, an oversight agency or a professional or registration authority. A report may be derived from a 'complaint' made to an institution.

Reportable conduct

'Reportable conduct' refers to conduct that must be reported under legislation that obliges designated institutions to report allegations of institutional child sexual abuse to an independent statutory body.

Respond

‘Respond’ is a broad term that refers to the actions an institution may take when it receives a complaint of child sexual abuse. Responses will vary depending on the nature of the complaint and can include examples from Table 7.1. Note that the list provided here is not exhaustive.

Table 7.1 – Responding to a complaint of child sexual abuse

Identifying a complaint	<p>There are a number of ways of identifying a complaint. For example:</p> <ul style="list-style-type: none">• listening to and taking seriously any child or adult survivor who indicates possible child sexual abuse• listening to and taking seriously a peer of the victim who indicates possible child sexual abuse of the victim• noticing any behaviour by staff members, volunteers, visitors or carers that constitutes grooming, child sexual abuse or a possible breach of an institution’s code of conduct• noticing changes in a child’s behaviour and/or• receiving a written complaint from the victim or another party.
Assessing risk	<p>This involves assessing the safety of any child or adult victims, and other affected parties, and determining what actions should be taken to ensure their safety. It may also involve determining what action should be taken about the subject of a complaint – such as supervision, removal of contact with children or termination of employment – and about any other institutional risks.</p>
Reporting	<p>Where required by legislative, contractual or other obligations, the institution must report the complaint to the police, a child protection authority, an oversight agency and/or a professional or registration authority.</p>
Investigating	<p>This is the process of inquiry that begins after a complaint has been received and an institution performs a risk assessment (see the definition of ‘investigation’ in this ‘Key terms’ section).</p>
Communicating and providing support	<p>Institutions may be required to communicate with all parties affected by the complaint and provide support for complainants, parents, staff and other children. Institutions may need to manage the media (including social media), where necessary.</p>
Maintaining records	<p>Institutions should maintain relevant records, including records of their investigation processes – for example, documenting reasons for decisions and subsequent action taken.</p>
Completing a root cause analysis	<p>Institutions may be required to review the circumstances of the complaint and the outcome to identify systemic factors that might have contributed to the incident.</p>
Monitoring and reviewing	<p>This may involve an institution having a system of policies, procedures and practices to inform continuous improvement and strengthen the protection of children for whom the institution has responsibility.</p>

Sexual misconduct

‘Sexual misconduct’ is a category of professional misconduct that must be notified to the NSW Ombudsman under the New South Wales reportable conduct scheme. Sexual misconduct includes conduct that does not necessarily meet the threshold of a sexual offence. The Ombudsman identifies three categories of sexual misconduct:

- crossing professional boundaries – this is, where an adult has a relationship with a child, engages in conduct towards a child, or focuses on a child in a way that can be ‘reasonably construed’ as being inappropriate or overly intimate
- sexually explicit comments and other overtly sexual behaviour with or towards a child
- grooming behaviour that indicates a pattern of conduct that is consistent with grooming a child for sexual activity.⁵

Subject of a complaint

The ‘subject of a complaint’ is a person an institution has received a complaint about who is alleged to have:

- committed child sexual abuse that constitutes a criminal offence
- breached the institution’s code of conduct
- displayed inappropriate behaviour towards a child or children in the care of the institution.

Victim and survivor

We use the terms ‘victim’ and ‘survivor’ to describe someone who has been sexually abused as a child in an institutional context. We use the term ‘victim’ when referring to a person who has experienced child sexual abuse at the time the abuse occurred. We use the term ‘survivor’ when referring to a person who has experienced child sexual abuse after the abuse occurred, such as when they are sharing their story or accessing support. Where the context is unclear, we have used the term ‘victim’.

We recognise that some people prefer ‘survivor’ because of the resilience and empowerment associated with the term. We recognise that some people who have experienced abuse do not feel that they ‘survived’ the abuse, and that ‘victim’ is more appropriate. We also recognise that some people may have taken their lives as a consequence of the abuse they experienced. We acknowledge that ‘victim’ is more appropriate in these circumstances. We also recognise that some people do not identify with either of these terms.

When we discuss quantitative information from private sessions in this volume, we use the term ‘survivor’ to refer both to survivors and victims who attended a private session and those (including deceased victims) whose experiences were described to us by family, friends, whistleblowers and others. This quantitative information is drawn from the experiences of 6,875 victims and survivors of child sexual abuse in institutions, as told to us in private sessions to 31 May 2017.

1.5 Structure of this volume

Chapter 2 examines the legislative framework in Australian states and territories that governs reporting of institutional child sexual abuse to external government authorities by institutions and their staff and volunteers. It explains what we learned about problems with reporting institutional child sexual abuse, and how to improve reporting by enhancing leadership and culture, policies and procedures, and training, education and guidance. It also recommends legislative reforms to improve reporting through extension of mandatory reporter groups and strengthened reporter protections.

Chapter 3 provides an overview of complaint handling, including a discussion of what we mean by the term ‘complaint’ and the types of complaints concerning institutional child sexual abuse. It explains some of the common problems with complaint handling and how institutions can improve complaint handling by being child safe. It also provides guidance to help institutions to improve their responses to complaints of child sexual abuse.

Chapter 4 discusses the need for independent oversight of institutional complaint handling. Independent oversight can assist institutions to better identify and manage risks to children. It can improve institutions’ competency, transparency and accountability in complaint handling and help to create a consistent standard of practice across sectors. We recommend that such oversight be provided through consistent national implementation of legislative reportable conduct schemes, which oblige heads of certain institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution’s employees and for the oversight body to monitor institutions’ investigation and handling of allegations. The chapter makes recommendations about the key elements of reportable conduct schemes and about the types of institutions that should be covered.

Endnotes

- 1 *Letters Patent*, 11 January 2013, (a), (b), (c), (g), (h).
- 2 L Sorsoli, M Kia-Keating & FK Grossman, “‘I keep that hush-hush’: Male survivors of sexual abuse and the challenges of disclosure”, *Journal of Counseling Psychology*, vol 55, no 3, 2008, pp 333–4.
- 3 C Esposito, *Child sexual abuse and disclosure: What does the research tell us?*, NSW Family and Community Services, Sydney, Undated, p 1.
- 4 C Esposito, *Child sexual abuse and disclosure: What does the research tell us?*, NSW Family and Community Services, Sydney, Undated, p 12.
- 5 NSW Ombudsman, *Child protection: Notifying and identifying reportable conduct*, 2017, pp 2–3, www.ombo.nsw.gov.au/__data/assets/pdf_file/0006/40992/FS11-Notifying-and-identifying-reportable-conduct-170210.pdf (viewed 5 July 2017).

2 Reporting institutional child sexual abuse to external authorities

2.1 Overview

Our work has shown that institutional child sexual abuse has been under-reported to external government authorities in situations where the abuse was known or suspected. We heard that adults who should have reported child sexual abuse to external authorities did not. As a result, victims were further sexually abused, other children were placed at risk of abuse, and perpetrators were not held to account for their criminal behaviour. The reasons for this inaction are complex and varied.

A report refers to where concerns relating to child sexual abuse are notified to an authority or agency external to the relevant institution. External authorities or agencies may include the police, a child protection agency, an oversight agency, or a professional or registration authority.

This chapter sets out the legislative framework in Australian states and territories that governs the reporting of institutional child sexual abuse to external government authorities by adults associated with an institution (such as owners, managers, staff and volunteers). It explains what we learnt about current problems with reporting institutional child sexual abuse and considers how inconsistency in obligatory reporting models, barriers to reporting abuse, and a lack of training, education and guidance contribute to systemic under-reporting.

The chapter sets out options to increase and improve the reporting of institutional child sexual abuse by enhancing: leadership, governance and culture; policies and procedures; and training, education and guidance. It recommends legislative reforms, including widening the categories of mandatory reporter groups and strengthening protections for reporters.

2.2 Voluntary reporting

In all Australian states and territories, any person may make a voluntary report of child sexual abuse to appropriate authorities.¹ In most jurisdictions, the appropriate authorities are the police or the child protection authority. The possibility of making a voluntary report of child sexual abuse exists, whether or not a pathway for such reports is provided by legislation.

2.2.1 Voluntary reporting to child protection authorities

Most states and territories have child protection legislation that provides for individuals to make voluntary reports to child protection authorities.² For example, in New South Wales individuals can make a report if they have reasonable grounds to suspect that a child is at risk of significant harm;³ in the Australian Capital Territory, individuals can make a report if they believe or suspect that a child is being, or is at risk of being, abused or neglected;⁴ and in Victoria, if they have significant concern for the wellbeing of a child.⁵

Legislating for individuals to voluntarily report known or suspected child sexual abuse serves several purposes, including:

- providing context for individuals who might want to make a report, and helping them to identify when their suspicions or beliefs that a child is being sexually abused should be reported
- providing a benchmark against which individuals can measure their suspicions or beliefs, thereby discouraging unfounded or baseless reports
- removing doubts or ambiguity as to the right and capacity of individuals to make voluntary reports.

In all states and territories except the Northern Territory (where legislation does not explicitly provide for voluntary reports), child protection legislation protects a voluntary reporter from civil and criminal liability where he or she acts in good faith.⁶ Protections for voluntary reporters of institutional child sexual abuse are discussed further in Sections 2.4.4 and 2.5.2.

2.2.2 Voluntary reporting to professional or registration bodies

Institutions may be entitled to report an employee who is facing a complaint of child sexual abuse to the employee's professional or registration body. Such bodies generally act as advocates for the profession, establish training standards, develop codes of conduct, and assist their members with practice development. Employees who are members of identified professional bodies must comply with the profession's ethical standards to be eligible for registration or membership. Failure to comply may result in disciplinary action, such as the imposition of conditions, suspension, deregistration or membership termination.⁷

2.3 Obligatory reporting

In each state and territory, certain individuals and institutions are legally obliged to report suspicions, risks and instances of child abuse and neglect, including child sexual abuse, to the police or child protection or oversight agencies. This type of reporting is known as 'obligatory reporting'. The aim of obligatory reporting is to detect, stop and prevent child abuse and neglect by requiring certain individuals and institutions to report to an external government authority.⁸ Exactly what reporting is required depends on the type of obligatory reporting and varies between states and territories. Obligatory reporting generally applies to a range of types of abuse and neglect of children, including child sexual abuse.

In Australia, the three main types of obligatory reporting are:

- mandatory reporting to child protection authorities – by which designated individuals must, in certain circumstances, report to child protection authorities suspected and known cases of child abuse and neglect, including child sexual abuse
- ‘failure to report’ offences – by which individuals face penalties if they fail to report to the police certain criminal offences committed, or believed to be committed, by others. For example, a person engaging in sexual activity with a child
- reportable conduct schemes – by which heads of certain institutions that provide services to, or engage with, children must report to an oversight body allegations and instances of reportable conduct (child abuse and neglect, including child sexual abuse) on the part of their employees and volunteers.

Under mandatory reporting laws and ‘failure to report’ offences, the responsibility to report is placed on an individual. However, under a reportable conduct scheme the responsibility to report is placed on the institution and discharged by a nominated office holder.

The presence of these three obligatory reporting models varies by jurisdiction. Table 7.2 sets out the status of the three main obligatory reporting models in each state and territory jurisdiction.

Table 7.2 – Status of obligatory reporting models by each state and territory jurisdiction

Jurisdiction	Mandatory reporting laws	Reporting offence/s	Reportable conduct scheme
NSW	Yes ⁹	Yes ¹⁰	Yes ¹¹
Vic	Yes ¹²	Yes ¹³	Yes ¹⁴
Qld	Yes ¹⁵	No	No
WA	Yes ¹⁶	No	No
SA	Yes ¹⁷	No	No
Tas	Yes ¹⁸	No	No
ACT	Yes ¹⁹	No	Yes ²⁰
NT	Yes ²¹	No	No

Mandatory reporting, ‘failure to report’ offences, reportable conduct schemes and other reporting obligations are discussed in the following section.

2.3.1 Mandatory reporting to child protection authorities

Mandatory reporting laws have been enacted in every Australian state and territory.²² Under these laws, certain individuals ('mandatory reporters') must report suspected cases of child abuse and neglect to a nominated government department or agency. This is typically the lead department or agency responsible for child protection.²³ Upon receiving a mandatory report, the nominated department or agency may assess the report, investigate the risk of harm (usually in collaboration with the police if sexual offences are suspected) and take steps to protect the safety and wellbeing of any affected children.²⁴

Government inquiries have consistently supported mandatory reporting laws.²⁵ Research undertaken for the Royal Commission shows that there has also been ongoing community support for mandatory reporting laws in Australia.²⁶ This research stated that there was 'relatively little scholarly refereed literature which provides reasoned normative arguments' against mandatory reporting laws.²⁷ However, the laws have been subject to critique, with opponents arguing that child protection authorities are unable to meaningfully address the increased reports of child abuse and neglect that result.²⁸

Mandatory reporting to child protection authorities assists in the detection, identification and reporting of child abuse and neglect.²⁹ Comparative studies between countries with and without mandatory reporting legislation have found that where it exists, substantially more cases of child sexual abuse are identified.³⁰ In every Australian jurisdiction, mandatory reporters are responsible for the majority of reports of child sexual abuse.³¹ Research suggests that mandatory reporting laws 'increase identification of cases of child sexual abuse ... thereby preventing further abuse of the child and possibly of other children, enabling health and safety responses for the child, and criminal justice responses to detect perpetrators'.³²

Mandatory reporting requirements can be complex and confusing: reporters must ascertain the level of knowledge or suspicion and the extent of harm or risk of harm that would activate the reporting duty. This can lead to a large number of unwarranted reports and an overburdened child protection system.³³ Yet research suggests that concerns about over-reporting primarily relate to the high numbers of reports made by mandatory reporters and members of the public of neglect and emotional abuse (including exposure to domestic violence).³⁴ Sexual abuse is the maltreatment type least reported by the core group of mandatory reporters (doctors, nurses, teachers and the police) in all states and territories except Western Australia.³⁵

State and territory mandatory reporting laws vary in key respects, including:

- who must report abuse or neglect
- the definitions of the kinds of abuse and neglect that must be reported
- the threshold required to activate a reporting obligation
- whether penalties apply for failures to report.

The commonalities and differences of mandatory reporting laws across jurisdictions are discussed in the following section.

Legislation by jurisdiction

As part of our inquiry, we commissioned research on the legislative history of mandatory reporting and in 2014 published *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*.³⁶ This report also identifies the differences between contemporary mandatory reporting models across all states and territories.

Australia's state and territory governments have developed and implemented their mandatory reporting laws gradually.³⁷ In 1969, South Australia became the first jurisdiction to enact such laws.³⁸ In 2009, Western Australia became the last.³⁹ Since 1969, legislative amendments have clarified reporting thresholds, broadened the range of abuse that should be reported, added reporter and alleged abuser groups, and increased and removed penalties for failure to report. Appendix A, 'Legislative developments in mandatory reporting laws, 1969–2014' outlines these developments by jurisdiction.

Mandatory reporter groups

Obligations regarding mandatory reporting to child protection authorities apply to individuals. Groups of individuals are generally designated as mandatory reporters based on their profession. In all states and territories, teachers, doctors, nurses and at least some members of the police force are mandatory reporters.⁴⁰ The inclusion of additional groups of individuals as mandatory reporters varies across jurisdictions. In Western Australia, for example, the only additional mandatory reporters are midwives and boarding supervisors.⁴¹ South Australia is the only jurisdiction to expressly include ministers of religion as mandatory reporters.⁴² In the Northern Territory, every person is a mandatory reporter.⁴³ Table 7.3 lists the mandatory reporter groups by each state and territory jurisdiction.

These differences between jurisdictions can cause confusion and frustration for service providers and potentially create varying levels of safety and protection for children.

Table 7.3 – Mandatory reporter groups by each state and territory jurisdiction

Jurisdiction	Reporter groups
NSW	Any person who, during their professional work or other paid employment, delivers healthcare, welfare services, education, children’s services, residential services, or law enforcement, wholly or partly, to children (and managers in organisations providing such services) ⁴⁴
Vic	Teachers, school principals, the police, nurses, registered medical practitioners, midwives ⁴⁵
Qld	Teachers, designated members of the police (pursuant to the Commissioner of Police’s direction), nurses, doctors and early childhood education and care professionals. ⁴⁶ Also child advocacy officers performing duties under the <i>Public Guardian Act 2014</i> (Qld), ⁴⁷ paid departmental or licensed residential care employees, and public servants employed by the Department of Communities, Child Safety and Disability Services ⁴⁸
WA	Teachers, police officers, nurses, doctors, midwives, boarding supervisors ⁴⁹
SA	Teachers, police officers, nurses, doctors, pharmacists, dentists, psychologists, community corrections officers, social workers, religious ministers, employees and volunteers in religious organisations, teachers in educational institutions, family day care providers, and employees and volunteers in organisations providing health, education, welfare, sporting or recreational services to children, and managers in relevant organisations ⁵⁰
Tas	Teachers and school principals, police officers, nurses, doctors, midwives, dentists, psychologists, probation officers, childcare providers, and employees and volunteers in government-funded agencies providing health, welfare, education, childcare or residential services to children ⁵¹
ACT	Teachers, police officers, nurses, doctors, dentists, midwives, psychologists, home education inspectors, school counsellors, childcare centre carers, home-based care officers, public servants working in services related to families and children, the public advocate, an official visitor, paid teachers’ assistants/aides, paid childcare assistants/aides ⁵²
NT	All persons ⁵³

Circumstances and thresholds for reporting

The circumstances under which, and the threshold at which, a mandatory report must be made varies across Australia's states and territories. Additionally, the terminology used to define applicable circumstances and thresholds can be confusing.

Every Australian state and territory includes child sexual abuse within the scope of conduct or suspected conduct that mandatory reporters must report to child protection authorities.⁵⁴ Western Australia is the only jurisdiction that defines child sexual abuse in its legislation concerning mandatory reporting to child protection authorities.⁵⁵

In all states and territories, mandatory reporters are required to report child sexual abuse that has occurred or is occurring.⁵⁶ In New South Wales, Victoria, Queensland and the Northern Territory, mandatory reporters are also required to report where a child is at risk of future sexual abuse by any person.⁵⁷ In South Australia and Tasmania, a mandatory reporter must report risk of future abuse by a household member.⁵⁸

The fact that a duty to report risk of future child sexual abuse does not currently apply in all circumstances in every jurisdiction is problematic. From evidence presented in our case studies, we learnt that child sexual abuse often involves the perpetrator engaging in grooming behaviours with children, and that these behaviours are often observed by colleagues.⁵⁹ Mandatory reporting of grooming behaviours may stop child sexual abuse that is occurring and prevent further abuse. For this reason, mandatory reporting laws should apply to risks of future child sexual abuse.

The Victorian and Queensland legislation qualifies the obligation to report. In these jurisdictions, a mandatory reporter is only required to make a report if a child is at risk of significant harm and the child's parents or carers have not protected, or are unlikely to protect, the child from harm.⁶⁰ Such a qualification can create confusion and uncertainty by requiring the mandatory reporter to assess the child's parents' or carers' capacity and will to protect the child.

In most jurisdictions, a mandatory reporter's obligation to report child abuse or neglect is triggered when the harm that may flow from that abuse or neglect reaches a certain degree of severity. While defining the extent of harm can be problematic and confusing, reporters should not have great difficulty determining that a risk to a child of sexual abuse is a cause of significant harm or detriment. The extent of harm – as it applies to sexual abuse – that should trigger a mandatory reporting obligation in each state and territory jurisdiction is set out in Table 7.4.

Table 7.4 – Extent of harm in relation to child sexual abuse that should trigger a mandatory reporting obligation, by each state and territory jurisdiction

Jurisdiction	Extent of harm
NSW	A child or young person ‘is “at risk of significant harm” if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of’ sexual abuse ⁶¹
Vic	Child has suffered, or is likely to suffer, significant harm as a result of sexual abuse ⁶²
Qld	Detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing ⁶³
WA	Extent of harm not specified: applies automatically to all suspected sexual abuse ⁶⁴
SA	Extent of harm not specified: applies automatically to all suspected sexual abuse ⁶⁵
Tas	Extent of harm not specified: applies automatically to all suspected sexual abuse ⁶⁶
ACT	Extent of harm not specified: applies automatically to all suspected sexual abuse ⁶⁷
NT	Extent of harm not specified: applies automatically to all suspected sexual abuse ⁶⁸

The ‘state of mind’ of the mandatory reporter (the level of knowledge, belief or suspicion that the abuse has occurred, is occurring, or is at risk of occurring) that is required to activate a reporting obligation can also potentially create confusion and inconsistency.⁶⁹ In each jurisdiction, the state of mind required to activate the duty to report is less than certainty, but more than a mere inkling.⁷⁰ Some jurisdictions use the standard that the mandatory reporter ‘suspects on reasonable grounds’,⁷¹ while others use the standard of ‘belief on reasonable grounds’ (the latter requiring a higher degree of certainty).⁷² In Tasmania, the obligation is engaged where a reporter ‘believes, or suspects, on reasonable grounds, or knows’,⁷³ while in Queensland it is engaged where a reporter ‘suspects on grounds that are reasonable in the circumstances’.⁷⁴

The state of mind requirements in each jurisdiction depend primarily on a somewhat subjective interpretation of what is ‘reasonable’, and the ability to differentiate between a ‘suspicion’ and a ‘belief’. This can lead to both over- and under-reporting.

Penalties

Penalties for not making a mandatory report to a child protection authority also vary across jurisdictions. In New South Wales⁷⁵ and Queensland,⁷⁶ there is no penalty if a mandatory reporter does not report, which arguably creates ambiguity about the enforceability of the scheme. In the Australian Capital Territory, by comparison, a mandatory reporter who fails to report may face a substantial fine and imprisonment.⁷⁷ Table 7.5 outlines the penalties for not making a mandatory report to a child protection authority by each state and territory jurisdiction. Some jurisdictions use ‘penalty units’ to determine the amount payable for not making a mandatory report. One penalty unit is equal to a certain monetary amount. For example, in Victoria, one penalty unit was equal to \$155.46 as at 30 June 2017.⁷⁸

Table 7.5 – Penalties for not making a mandatory report to a child protection authority by each state and territory jurisdiction

Jurisdiction	Penalty
NSW	None ⁷⁹
Vic	10 penalty units ⁸⁰
Qld	None ⁸¹
WA	\$6,000 fine ⁸²
SA	\$10,000 fine ⁸³
Tas	20 penalty units ⁸⁴
ACT	50 penalty units, imprisonment for six months, or both ⁸⁵
NT	200 penalty units ⁸⁶

Protections for mandatory reporters

Every jurisdiction entitles mandatory reporters to have their identity protected.⁸⁷ However, in many jurisdictions there are circumstances in which a mandatory reporter’s identity may be disclosed to third parties.⁸⁸ For example, in New South Wales the identity of a mandatory reporter may be disclosed by any person or body with the consent of the mandatory reporter or the leave of a court or body before which proceedings relating to the report are conducted.⁸⁹

In all states and territories, mandatory reporters who report to child protection authorities in good faith are entitled to immunity from liability in any legal proceedings that may arise from the reporting.⁹⁰

In every jurisdiction, the making of a mandatory report in good faith does not constitute a breach of professional etiquette⁹¹ or ethics⁹² or a departure from accepted standards of professional conduct.⁹³

Some jurisdictions provide additional protections for mandatory reporters. For example, making a mandatory report in good faith does not breach any duty of confidentiality in Western Australia and the Australian Capital Territory.⁹⁴

Most jurisdictions do not protect individuals from reprisals for making a mandatory report in good faith. South Australia is alone in having a provision that imposes penalties on persons who threaten or intimidate, or cause damage, loss or disadvantage to a mandatory reporter for discharging, or proposing to discharge, their duty.⁹⁵ Even this provision is framed as a negative obligation, in that it is a duty *not* to engage in threats or reprisals against mandatory reporters. No jurisdiction imposes a positive obligation on institutions, their staff and volunteers to protect mandatory reporters from such threats and reprisals.

In Section 2.5.2 we discuss strengthening reporter protections in further detail, including protections for mandatory reporters.

Response triggered by a mandatory report

A mandatory report necessitates a response from the relevant child protection authority, which may involve assessment, investigation of risk and possibly the removal of the child from harm. The role of a child protection authority is to protect the child from familial or institutional abuse where the parents or carers cannot, or are not, protecting the child from harm.⁹⁶

If a mandatory report of institutional child sexual abuse has been made to the child protection authorities and a parent is acting protectively, the child protection authorities can determine whether a risk of significant harm and grounds for intervention exist. In *Case Study 37: The response of the Australian Institute of Music and RG Dance to allegations of child sexual abuse (Centres for performing arts)*, Ms Deidre Mulkerin, Deputy Secretary of the NSW Department of Family and Community Services (FACS), Western Cluster, said:

it may well be that a child is at risk in the institution over here. However, their parents intervene, protect, make that child safe, so the event has happened but there is no reason for the statutory agency to intervene because the parents have made decisions about the child being safe.⁹⁷

Following a mandatory report, the police will investigate if they are notified of criminal allegations by, for example, child protection authorities, institutions or parents/carers.

Mandatory reporting to child protection authorities does not trigger any oversight of the way an institution has handled a complaint of child sexual abuse.

2.3.2 ‘Failure to report’ offences

‘Failure to report’ offences impose criminal liability on third parties – that is, persons other than the perpetrator of the child sexual abuse – who know or believe that child sexual abuse has taken place but fail to report this abuse to the police. These third parties must report abuse to the police in order to avoid committing a ‘failure to report’ offence.

Criminal law generally imposes negative duties that require a person to refrain from doing an act. It is unusual, although not unprecedented, for criminal law to impose a positive duty that requires a person to act. A positive duty to report or take action in response to serious crimes may be considered more onerous, because it requires a person to take action despite their not being responsible for committing the crime.

However, there are good reasons for criminal law to impose positive obligations on third parties to act in relation to child sexual abuse. Many survivors have told us that they disclosed being sexually abused at or around the time of the abuse to adults in the institution where the abuse occurred, but those adults did not report the abuse to police. ‘Failure to report’ offences can address under-reporting of child sexual abuse by imposing a positive legal obligation on adults who know, suspect or should suspect that child sexual abuse has taken place to report this abuse to the police. This enables the police to act against perpetrators and protects children from sexual abuse.

Legislation by jurisdiction

Common law offence of misprision of felony

All states and territories have abolished the common law offence of misprision of felony, both explicitly and implicitly (that is, by not adopting the offence in a Criminal Code or by not using the category of ‘felony’). Misprision of felony required a third party, who knew that a felony had been committed and realised that their knowledge would materially assist the police, to report to the police what they knew about both the crime and the criminal.⁹⁸

Despite this, misprision of felony may still be relevant if an offence of misprision of felony is alleged to have been committed before the offence was abolished in the relevant jurisdiction. (see also information on misprision of felony in our *Criminal justice* report, Chapter 16, ‘Failure to report offences’⁹⁹.)

New South Wales Crimes Act offence of concealing a serious indictable offence

In New South Wales, misprision of felony was replaced in 1990 by the offence of ‘Concealing serious indictable offence’ in section 316(1) of the *Crimes Act 1900* (NSW). The section provides:

If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.¹⁰⁰

This offence does not exist in other Australian jurisdictions, although all jurisdictions except South Australia have enacted criminal offences for soliciting or accepting a benefit in exchange for failing to report an offence.¹⁰¹

A serious indictable offence is an offence a person may be charged with that is punishable by five years’ imprisonment or more,¹⁰² which would cover most but not all current child sexual abuse offences.¹⁰³ It would not capture a number of child sexual abuse offences if they were alleged to have occurred at a time when the maximum penalty was less than five years, even if the penalty is now five years or more.

The offence requires knowledge or belief that an offence has been committed. The belief in question is a subjective belief – that is, the person must hold the belief – but there is no requirement that the belief be reasonable.¹⁰⁴ Mere suspicion is not knowledge or belief.

If the person has information that might be of material assistance, they must report it to a ‘member of the police force or other appropriate authority’. What constitutes an ‘other appropriate authority’ is uncertain because the legislation leaves it undefined.¹⁰⁵ Reporting child sexual abuse offences to the Kids Helpline, operated by the NSW Department of Family and Community Services (FACS), would probably constitute reporting to an ‘appropriate authority’, particularly given the department’s role in referring matters to the Joint Investigation Response Team Referral Unit. Similarly, reporting child sexual abuse offences to the NSW Ombudsman under the state’s reportable conduct scheme might also constitute reporting to an ‘appropriate authority’ for the purposes of avoiding committing an offence under section 316(1).

Although section 316(1) has been used to prosecute the concealment of serious crimes such as murder and manslaughter, it appears that the offence has rarely been used to prosecute concealment of child sexual abuse offences.

Victorian offence of failure to disclose a child sexual offence

In 2014, Victoria enacted an offence of failure to disclose a sexual offence committed against a child¹⁰⁶ in response to recommendations made in the reports of the 2012 Protecting Victoria's Vulnerable Children Inquiry¹⁰⁷ and the 2013 Victorian Parliament Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations.¹⁰⁸

The Victorian offence of failure to disclose a child sexual offence is contained in section 327(2) of the *Crimes Act 1958* (Vic). Under this provision, an adult who has information that leads them to form a reasonable belief that a 'sexual offence' has been committed in Victoria against a child (under the age of 16) by an adult must disclose that information to a police officer as soon as it is practicable to do so, unless they have a reasonable excuse for not doing so. The maximum penalty for a failure to disclose such offences is three years' imprisonment.

Section 327(2) defines a 'sexual offence' to include:¹⁰⁹

- rape and sexual assault
- incest
- sexual offences against children, including sexual penetration, indecent acts, persistent child sexual abuse, grooming and the failure by a person in authority to protect a child from a sexual offence
- sexual offences against persons with a cognitive impairment
- other sexual offences including administration of drugs, procuring and bestiality
- sexual servitude.

A sexual offence is also defined to include an attempt to commit these offences and an assault with intent to commit these offences. It does not include child pornography offences, although it does include the broader Victorian grooming offence in section 49B of the *Crimes Act 1958* (Vic).

The Victorian Government's fact sheet on the offence states that a belief is reasonable if a reasonable person in the same position would have formed the belief on the same grounds.¹¹⁰

Examples the fact sheet provides of when a 'reasonable belief' might be formed include when:¹¹¹

- a child states that they have been sexually abused
- a child states that they know someone who has been sexually abused (sometimes children might be talking about themselves)
- someone who knows a child states that the child has been sexually abused
- professional observations of a child's behaviour or development leads a professional to form the belief that the child has been sexually abused
- a child exhibiting signs of sexual abuse leads to the belief that the child has been sexually abused.

Section 327(3) sets out two grounds that constitute a reasonable excuse for failure to disclose. They are:

- a fear on reasonable grounds for the safety of any person (other than the alleged offender) if the person were to disclose the information to the police and the failure to disclose is a reasonable response in the circumstances
- a belief on reasonable grounds that the information has already been disclosed to the police – an example is given of the person having already complied with their mandatory reporting obligations under the *Children, Youth and Families Act 2005* (Vic).¹¹²

Section 327(4) excludes as a reasonable excuse concern for the perceived interests of the alleged offender or any organisation. This would preclude protection of the interest – including protection of the reputation – of an institution from constituting a reasonable excuse for failure to disclose.

There are exceptions to the commission of the offence. A person does not commit the offence if:

- the information about the offence came directly or indirectly from the victim, the victim was of or over the age of 16 years and the victim asked that the information not be disclosed (unless the victim has intellectual disability or otherwise lacks capacity to make an informed decision)¹¹³
- the person came into possession of the information when they were a child¹¹⁴
- the information falls within certain categories of privileged information, including information obtained through a rite of confession or similar religious practice, that is subject to legal professional privilege or communicated by victims to counsellors or medical practitioners¹¹⁵
- the information was obtained solely through the public domain.¹¹⁶

An exception also applies where the victim had turned 16 years before October 2014, which is when the provision was enacted.¹¹⁷ That is, institutions need not disclose historical allegations, even if they were made when the victim was under 16 years of age and even if they were made by a person other than the victim.

Response triggered by failing to report an offence to the police

An adult in New South Wales or Victoria who does not act in accordance with each jurisdiction's relevant 'failure to report' offence may face criminal penalties. The criminal penalty under section 316(1) of the *Crimes Act 1900* (NSW) is up to two years' imprisonment.¹¹⁸ Under section 327(2) of the *Crimes Act 1958* (Vic) it is up to three years' imprisonment.¹¹⁹

‘Failure to report’ offences do not trigger any oversight of the way an institution has handled a complaint of child sexual abuse.

‘Failure to report’ offences are considered in detail in our *Criminal justice* report, Chapter 16, ‘Failure to report offences’.¹²⁰

2.3.3 Reportable conduct schemes

A reportable conduct scheme is a legislated scheme that requires reporting, investigation and oversight of child protection-related concerns that arise in certain government and non-government institutions that provide services to, or engage with, children.

Under such a scheme, the head of an institution must notify an oversight body of any reportable allegation, conduct or conviction involving the institution’s employees and volunteers. The oversight body then monitors and scrutinises the institution’s handling and investigation of the complaint.¹²¹ A reportable conduct scheme is the only obligatory reporting model that facilitates this oversight and monitoring function. In this way, a reportable conduct scheme improves reporting of, and responses to, child sexual abuse that occurs in institutions.

Legislation by jurisdiction

The only reportable conduct scheme in full operation during the period of this inquiry was that in New South Wales. It was implemented in May 1999 under Part 3A of the *Ombudsman Act 1974* (NSW).¹²² In July 2017, reportable conduct schemes began in Victoria and the Australian Capital Territory.¹²³

In April 2016, the Council of Australian Governments (COAG) agreed in principle to nationally harmonised reportable conduct schemes, similar to the New South Wales model.¹²⁴ This commitment to a common approach seeks to improve oversight of responses to allegations of child abuse and neglect.¹²⁵

Victoria and the Australian Capital Territory’s reportable conduct schemes are based on the New South Wales model. Other states and territories have expressed varying degrees of interest in, and commitment towards, developing reportable conduct schemes.¹²⁶ See Chapter 4, ‘Oversight of institutional complaint handling’ for more information on reportable conduct schemes.

Response triggered under a reportable conduct scheme

A report of institutional child sexual abuse made under a reportable conduct scheme triggers independent oversight of the way an institution has handled, and continues to handle, the complaint.

Under the scheme in New South Wales, the Ombudsman, after being notified of a reportable conduct matter, assesses the level of oversight of the institution that is required. The assessment is based on factors including the seriousness and complexity of the allegation and the Ombudsman's knowledge of the relevant institution's systems for responding to allegations.¹²⁷ The Ombudsman may then directly investigate the allegation,¹²⁸ monitor an investigation,¹²⁹ or oversee an investigation.¹³⁰

If the Ombudsman identifies problems with an institution's handling of reportable conduct, it may provide the institution with non-binding recommendations for action to be taken.¹³¹ These details are discussed further in Chapter 4.

2.3.4 Other reporting obligations

Other reporting obligations may require institutions to report child sexual abuse to:

- an oversight body outside the context of reportable conduct
- sector or industry regulators
- a party with which the institution has contractual or policy-based reporting obligations.

Oversight bodies

As explained above, some jurisdictions require certain institutions to report employee-related child protection concerns to an oversight body under a reportable conduct scheme. Separate to such schemes, some institutions are required to report complaints or findings of institutional child sexual abuse to an oversight body in their jurisdiction, such as an ombudsman, children's commissioner or children's guardian. For example:

- Institutions that employ staff and volunteers who hold a Working With Children Check (WWCC) may be required to report findings of institutional child sexual abuse to the oversight body in their jurisdiction that administers the WWCC scheme. In New South Wales, for example, reporting bodies are obliged to report sustained findings of sexual misconduct committed against, with, or in the presence of a child, including grooming of a child, to the NSW Office of the Children's Guardian.¹³² The effectiveness of the WWCC scheme relies in part on institutions fulfilling these obligations so that the oversight body can make informed decisions about individuals' suitability to work with children.

- Government departments responsible for out-of-home care may be required to report findings of institutional child sexual abuse to an oversight body. In the Northern Territory, the Department of Children and Families must notify the Northern Territory Children’s Commissioner of all cases where a complaint of child sexual abuse in out-of-home care has been substantiated.¹³³ In South Australia, all complaints of child sexual abuse in out-of-home care are reported to the South Australian Office of the Guardian for Children and Young People.¹³⁴
- In New South Wales, accredited out-of-home care providers must report allegations of sexual misconduct against a child or young person in statutory out-of-home care to the New South Wales Office of the Children’s Guardian.¹³⁵
- Disability service providers may be required to report institutional child sexual abuse involving children with disability to an oversight body. For example, in New South Wales the reportable conduct scheme is complemented by a Disability Reportable Incidents Scheme. Under this scheme, the Secretary of FACS or the head of a funded provider must report to the Ombudsman any sexual offence or sexual misconduct committed by any of their employees against, with, or in the presence of a child with disability living in supported group accommodation.¹³⁶
- COAG has proposed that an independent statutory body headed by a complaints commissioner be established as part of the complaints system of the National Disability Insurance Scheme.¹³⁷ It is proposed that registered service providers be required to report ‘serious incidents’, including alleged sexual assault by an employee, to this complaints commissioner.¹³⁸

Sector or industry regulators

Certain institutions must report complaints of child sexual abuse to a sector or industry regulator. This is the case in the early childhood and health sectors, as discussed in this section. In Volume 13, *Schools* we discuss the obligation of schools to report complaints of child sexual abuse made against their teachers to teacher registration bodies.

Early childhood sector

In the early childhood sector, the Education and Care Services National Law, as in force in each jurisdiction, obliges institutions that come under the law to report complaints and serious incidents to the relevant regulatory authority.¹³⁹

Under the Victorian application of this national law – *Education and Care Services National Law Act 2010* (Vic) – a complaint is defined as an allegation that ‘the safety, health or wellbeing of a child or children was or is being compromised while that child or children is or are being educated and cared for by the approved education and care service’.¹⁴⁰

The Education and Care Services National Regulations underpin the national law and are adopted in every jurisdiction. In New South Wales, for example, the regulations prescribe serious incidents to include:¹⁴¹

- a. any incident involving serious injury or trauma to, or illness of, a child while being educated and cared for by an education and care service:
 - i. which a reasonable person would consider required urgent medical attention from a registered medical practitioner or
 - ii. for which the child attended, or ought reasonably to have attended, a hospital
- b. any incident where the attendance of emergency services at the education and care service premises was sought, or ought reasonably to have been sought.

Failure to notify the state or territory regulatory authority of complaints and serious incidents attracts monetary penalties. In Victoria, for example, these penalties range from \$4,000 to \$20,000.¹⁴²

Health sector

In the health sector, registered health practitioners, education providers and employers of registered practitioners must report 'notifiable conduct' to the Australian Health Practitioner Regulation Agency under the Health Practitioner Regulation National Law, which has been adopted by all states and territories.¹⁴³ In New South Wales, notifiable conduct is defined as where a practitioner has:

- engaged in sexual misconduct in connection with the practice of their profession
- placed the public at risk of harm because the practitioner has significantly departed in their practice from accepted professional standards.¹⁴⁴

The threshold for reporting to the regulation agency is a reasonable belief and the report must be made as soon as practicable.¹⁴⁵ Any practitioner who fails to report may be subject to 'health, conduct or performance action'.¹⁴⁶ If the regulation agency becomes aware that an employer of a registered health practitioner has not reported notifiable conduct, it must provide the relevant government minister with a written report.¹⁴⁷ The responsible minister must then report the employer's failure to a health complaints entity, the employer's licensing authority or another appropriate entity in their jurisdiction.¹⁴⁸

Contractual or policy-based obligations

Institutions that respond to complaints of child sexual abuse need to consider any contractual or policy-based reporting obligations that would require them to report to an external government authority. For example, funding agreements between governments and service providers may require a service provider to report complaints of child sexual abuse to a relevant government

department. We heard that this is commonly the case in the out-of-home care sector, where contractual arrangements require government-funded service providers to report complaints of child sexual abuse to the relevant department through an incident reporting mechanism.¹⁴⁹

2.4 Problems with reporting institutional child sexual abuse

Our work has shown that child sexual abuse in institutions has been under-reported in situations where the abuse was known or suspected.¹⁵⁰ In case studies, private sessions and consultations we were repeatedly told of instances where adults associated with an institution did not report child sexual abuse to the police, child protection authorities and other external government agencies.¹⁵¹ As we were told by a survivor in one private session, '[The staff] didn't know how to deal with it ... Nothing was ever done'.¹⁵²

Under-reporting occurred in circumstances where adults associated with an institution were obliged to report, and also in circumstances where they were not. Under-reporting can have profound and negative consequences as it may:

- expose the victim to further sexual abuse¹⁵³
- expose other children to the risk of sexual abuse¹⁵⁴
- lessen a child's willingness to disclose sexual abuse¹⁵⁵
- reduce opportunities for the victim to receive advocacy, support and therapeutic treatment¹⁵⁶
- protect the alleged perpetrator¹⁵⁷
- stop the alleged perpetrator from being held to account for their criminal behaviour
- conceal sexual abuse¹⁵⁸
- contribute to institutional cultures and practices that fail to protect children¹⁵⁹
- create or add to fears or concerns about reporting for potential reporters
- undermine the ability of the criminal justice system, and regulatory and oversight agencies, to respond to child sexual abuse.

We learnt that many reporters experience difficulties when making a report. In particular, mandatory reporters told us about the challenges they often face when seeking to discharge their reporting obligations, such as unsupportive institutional cultures that discourage reporting.¹⁶⁰

Research suggests that institutional power structures, hierarchies and vested interests are particularly likely to operate in ways that conceal child sexual abuse within the institution.¹⁶¹ In these instances, it is more likely that individual staff members and the institution itself will keep matters in-house, and that senior management will deter reports.

We have identified four key problems with reporting institutional child sexual abuse. The first is that obligatory reporting models are not consistent across Australian jurisdictions. The second is that barriers exist for those who want to report child sexual abuse. The third is that the training, education and guidance that exists about reporting obligations – what to report and how to make a report – are inadequate. The fourth is that there are gaps in the legislative protections available to reporters.

We also identified that problems with reporting have arisen in two contexts in particular: reporting of allegations of historical institutional child sexual abuse and reporting of child sexual abuse involving children with harmful sexual behaviours.

2.4.1 Inconsistencies in obligatory reporting models

As outlined in Section 2.3, ‘Obligatory reporting’, the three main obligatory reporting models – mandatory reporting to child protection authorities, ‘failure to report’ offences and reportable conduct schemes – do not exist in every Australian jurisdiction. Where they do exist, they differ in detail – for example, who is required to report and at what threshold. These inconsistencies arguably result in varying levels of protection for children, under-reporting of known or suspected child sexual abuse by institutions and their staff, and ongoing challenges and confusion for institutions and their staff. These issues are discussed in this section.

Varying levels of protection for children

We heard that reporting obligations are perceived by survivors, advocacy groups and oversight bodies as an important regulatory tool for protecting children. For example, in *Case Study 29: The response of the Jehovah’s Witnesses and Watchtower Bible and Tract Society of Australia Ltd to allegations of child sexual abuse (Jehovah’s Witnesses)*, survivor BCG stated, ‘I think it is paramount that uniform [reporting obligations] are introduced across Australia to apply to institutions like the Jehovah’s Witnesses ... in order to protect children’.¹⁶² Care Leavers Australasia Network (CLAN) (formerly Care Leavers Australia Network) submitted that:

when discussing the issue of offences for NOT reporting, CLAN do believe that this is an extremely useful tool in encouraging everyone in society to protect children and to have the child’s best interests at heart. Unfortunately, sometimes the only way to ensure that the right thing is done is through the threat of a penalty or punishment.¹⁶³

Inconsistencies in obligatory reporting models may result in varied levels of protection for children.¹⁶⁴ The Queensland Family and Child Commission submitted that ‘differences in reporting requirements ... leave already vulnerable children without the necessary safeguards to be protected from harm’.¹⁶⁵ In response to a question about the merits of a nationally consistent approach to mandatory reporting laws in *Case Study 24: Preventing and responding*

to allegations of child sexual abuse occurring in out-of-home care (out-of-home care), Wesley Mission Victoria stated that 'the benefits of a uniform regulatory environment relate to consistency in outcomes for victims, which do not discriminate by State or institution'.¹⁶⁶

Jurisdictions with comprehensive obligatory reporting models have the potential to provide higher levels of safety and protection for children. For example, the NSW Ombudsman received 1,385 formal notifications of reportable allegations and convictions under the New South Wales reportable conduct scheme in the 2015–16 financial year.¹⁶⁷ Over one-third of these notifications involved alleged sexual offences or misconduct.¹⁶⁸ As part of its oversight role, the Ombudsman helped the institutions that made these reports to handle the allegations appropriately, for example, in assessing and managing any risks, and conducting fair and thorough investigations. This assistance provides additional safeguards to protect children in New South Wales that are not available for children in jurisdictions without such schemes.

Under-reporting by institutions and their staff

Variations in obligatory reporting models across jurisdictions mean that institutions have different obligations to report institutional child sexual abuse, depending on what sector and jurisdiction they operate in. Some institutions, such as schools and healthcare providers, are subject to at least one obligatory reporting model in every jurisdiction because of the individual reporting responsibilities placed on their staff. For example, teachers, doctors and nurses are obliged to report child sexual abuse under laws concerning mandatory reporting to child protection authorities in every state and territory.¹⁶⁹ Other institutions, including religious and sport and recreational organisations, are not subject to any reporting obligations in some jurisdictions. For example, people in religious ministry are not subject to any of the three main obligatory reporting models in Queensland, Western Australia, Tasmania and the Australian Capital Territory.

Inadequate coverage of institutions by obligatory reporting models may result in under-reporting of child sexual abuse in institutional contexts. In circumstances where an institution and adults associated with the institution are not legally required to report complaints of child sexual abuse to an external authority, complaints can be kept in-house, to the considerable detriment of the children concerned.

The evidence in our case studies suggested that without legal obligations, many institutions and their staff and volunteers did not report child sexual abuse outside the institution.¹⁷⁰ We saw this most starkly in our *Jehovah's Witnesses* case study. At the time of the public hearing, the Jehovah's Witnesses in Australia had recorded complaints of child sexual abuse made against 1,006 members of the organisation.¹⁷¹ There was no evidence before the Royal Commission that the organisation reported any of these complaints to an external government authority.¹⁷²

The Jehovah's Witnesses' records included admissions of child sexual abuse made by 579 members of the organisation.¹⁷³ In one case examined during the public hearing, we heard that a male congregation member who confessed to sexually abusing one of his daughters continued to pose a risk to his own and other children because the organisation's elders – who investigated the complaint – did not report to an external government authority.¹⁷⁴

We concluded that the organisation's practice of not reporting serious instances of child sexual abuse to external government authorities – in particular, where the complainant was a child – demonstrated a serious failure by the organisation to provide for the safety and protection of children in the organisation and in the community.¹⁷⁵

We also heard in private sessions about under-reporting of child sexual abuse to external authorities by the Jehovah's Witnesses.¹⁷⁶ One survivor told us:

I know for a fact that they will not go to the authorities. They have blatantly said that they will not report anything. There's got to be a witness, two or three witnesses, if anybody comes to them with an abuse case. That's never going to happen because there's no witnesses when someone's getting abused ... It's got to be forced on them. They will not, off their own bat, just change ... They will protect their own name at all costs.¹⁷⁷

Challenges for institutions and their staff

The inconsistency in obligatory reporting models across jurisdictions creates problems for institutions and adults associated with the institution because it:

- creates compliance challenges for institutions operating across borders.¹⁷⁸ These institutions must navigate multiple complex reporting obligations to distinguish what conduct must be reported to an external government authority in each jurisdiction
- burdens institutions with keeping track of differences in, and changes to, legislation and advising adults associated with the institution about their obligations
- causes confusion for adults associated with the institution who move across jurisdictional boundaries.¹⁷⁹ They must learn about a new set of reporting obligations that may be quite different from those in their previous jurisdiction. Alternatively, they may no longer have any reporting obligations, potentially causing confusion about whether they can and should report child sexual abuse to an external authority as a voluntary reporter.

For our detailed discussion and recommendations on how to solve problems with reporting that are caused by inconsistencies in obligatory reporting models, see Section 2.5, 'Improving institutional reporting'.

2.4.2 Barriers to reporting

Reporting known or suspected child sexual abuse can be daunting. As identified in research, the journey from observing something suspicious to being clear enough to report it can be complicated.¹⁸⁰ Individuals face an array of obstacles and competing priorities when deciding whether to report known or suspected child sexual abuse. We refer to these difficulties as ‘barriers to reporting’.

Barriers to reporting may be institutional or personal, or a combination of both. In institutions that have closed and secretive cultures, where the preference is for complaints of child sexual abuse to be kept in-house, the institution’s leadership, governance and culture can present significant barriers to reporting.¹⁸¹

The fears and concerns of individuals in institutional settings can also create barriers to reporting.¹⁸² Individuals may experience considerable uncertainty and anxiety because identifying child sexual abuse is difficult. Often, the concerning behaviour is ambiguous and the abuse is hidden.¹⁸³ Further, perpetrators may manipulate or groom potential reporters so that they are ‘slow to understand or believe what they are seeing’ or hearing.¹⁸⁴ Concern about reporting can also arise because of the possible negative consequences of identifying a person as an alleged child abuser.¹⁸⁵

Barriers to reporting may be explicit or implicit. An explicit barrier exists when leaders or staff members at an institution instruct or pressure a potential reporter not to report.¹⁸⁶ Examples of less obvious or implicit barriers are where a potential reporter lacks understanding of when and how to report,¹⁸⁷ or downplays the seriousness of conduct to the benefit of a friend or colleague.¹⁸⁸

These barriers can compromise the safety of children. When individuals are faced with barriers to reporting, the risk is that they will reframe, minimise and reinterpret what they are seeing to avoid concluding that they should report.¹⁸⁹ We saw examples in our case studies where barriers to reporting resulted in failures to report, delayed reporting, and ineffectual or inappropriate reporting of child sexual abuse.¹⁹⁰

Volume 4, *Identifying and disclosing child sexual abuse* discusses the barriers to victims disclosing sexual abuse. While the barriers to disclosing and reporting can overlap, there are also major differences because the individuals reporting child sexual abuse are usually adults connected to the institution, not the child victims. This section outlines the types of barriers to reporting and what we learnt about these barriers, in circumstances where reporting obligations did and did not apply.

Institutional barriers

In research reports we commissioned, we examined the role of organisational culture in failures to report child sexual abuse to external authorities. These reports identified certain features of an institution that could deter reporting,¹⁹¹ such as its culture, leadership and governance, and its internal power structures. In our discussion of these features we draw on the results and insights of case studies, private sessions and research.

Leadership, governance and culture

The first of the 10 Child Safe Standards that we have recommended to make institutions child safe is that child safety be embedded in institutional leadership, governance and culture (see Chapter 3 of Volume 6, *Making institutions child safe*.) If leadership is unsupportive, governance structures inadequate or culture dysfunctional, individuals can be deterred from reporting child sexual abuse.¹⁹²

An institution's leadership, governance and culture can not only discourage reports to external authorities but can also deter individuals from making child sexual abuse complaints within the institution. Such complaints are often the precondition for external reporting.

Leadership: Our research suggests that institutional leaders often prioritise the protection of an institution's public image and the need to reduce any potential legal liability over and above effective handling of child sexual abuse complaints.¹⁹³ Reputation and the need to manage legal risk can override other concerns or interests, such as child safety.¹⁹⁴ Institutions delivering services to children depend on their reputation as safe and nurturing environments.¹⁹⁵ This reputation can be jeopardised by the public revelation of child sexual abuse complaints, in the media and/or during legal proceedings.¹⁹⁶ For these reasons, we have heard that institutions' leaders may place the interests of the institution above the need to report child sexual abuse.

Governance: In our case studies, we found that some institutions had inadequate policies and procedures for reporting child sexual abuse or did not conduct training to make adults associated with the institution aware of the relevant policies and procedures that were in place.¹⁹⁷ These individuals therefore may have had little knowledge or guidance about how to report outside their institution. This issue is exacerbated where there is a lack of culturally safe and accessible reporting policies and procedures.¹⁹⁸ If policies and procedures are not translated into community languages and explained so they have meaning within the relevant cultural contexts, access to reporting channels can be inhibited and the likelihood that reports would be made is lessened.¹⁹⁹

The problems inadequate policies and procedures pose for reporting were demonstrated in *Case Study 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse (Youth detention centres, Victoria)*. In this case study, we examined the experience of former Winlaton Youth Training Centre resident, Katherine X, in 1979 and the response of the training centre and the Victorian Department of Health and Human Services staff to her disclosures of child

sexual abuse.²⁰⁰ Although four staff members were aware that Katherine X had disclosed sexual abuse, none of them reported it to Victoria Police.²⁰¹ At the time of Katherine X's disclosures in 1979, there was a lack of policies and procedures for dealing with reports of sexual abuse of residents.²⁰² This resulted in a lack of clarity about who was ultimately responsible for making key decisions and also meant that Katherine X's disclosures of sexual abuse were not reported to Victoria Police.²⁰³ We found that the lack of policies did not excuse or prohibit the staff members from reporting Katherine X's sexual abuse to Victoria Police.²⁰⁴ We also found that the lack of policies and procedures led to a failure to protect Katherine X from sexual abuse.²⁰⁵

We explore these issues further in Section 2.4.3, 'A lack of training, education and guidance'.

Even where adequate policies and procedures exist, the culture of an institution can undermine effective compliance with them.²⁰⁶ Our research suggests that in some institutions cultures develop where adults associated with the institution view external authorities with distrust or do not accept their legitimacy.²⁰⁷ This can lead to adults associated with the institution resisting the authority of external agencies by not making reports.

In a private session, 'Meredith Anne' told us that she had witnessed a person in religious ministry touching a child in a sexually concerning way.²⁰⁸ We heard that senior leaders in the institution tried to discredit her by suggesting she had exaggerated what she saw and that the conduct did not, in fact, amount to sexual abuse.²⁰⁹ 'Meredith Anne' told us that she was 'vilified and disbelieved'.²¹⁰ She fought the institution for years, at great personal cost:

For three years I fought the bastards and it got me nowhere except into poverty, homelessness, part of the hidden homeless phenomena. Lost my husband ... I lost everything but drawing breath. I just lost life as I knew it. I've been through hell.²¹¹

'Meredith Anne' noted that a leader of the religious institution told the congregation that 'the government' was forcing the institution to adopt new legislated procedures for child safety and that the institution must comply or else it might be shut down.²¹² She said she felt that the institution had made changes only when required by legislation, not voluntarily or proactively, and its motivation was to protect its future:

All these years later. They've been forced into it now by the law. They have not voluntarily done this stuff, even after all we went through ... somebody said to me 'Although you've made a terrible sacrifice, at least it's changed things'. Oh really? Might have changed the paperwork but it hasn't changed attitudes.²¹³

Culture: We commissioned research to examine why people failed to identify and report the institutional child sexual abuse we heard about in two of our case studies – *Case Study 1: The response of institutions to the conduct of Steven Larkins* and *Case Study 2: YMCA NSW's response to the conduct of Jonathan Lord (YMCA NSW)*.²¹⁴ This research report, *Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional*

contexts, discussed institutional culture as a strong barrier to reporting.²¹⁵ The research report recounted how, in our *YMCA NSW* case study, it was apparent that a culture had developed where staff perceived that it was unimportant to adhere to child protection-related policies and procedures.²¹⁶ This allowed childcare worker Jonathan Lord to groom and sexually abuse children in his care ‘without appearing strikingly different from colleagues’.²¹⁷ For these reasons, improving reporting in institutional settings requires a group-wide approach:

While it is possible to criticise an individual’s approach for being lax, seeking to change this attitude requires a group-wide strategy since each individual will have been influenced in adopting this attitude by the behaviour of colleagues. Moreover, it is important to look beyond the local group and consider whether wider organisational factors helped this cultural norm to develop.²¹⁸

Many of the religious institutions we examined in our case studies had institutional cultures that discouraged reporting of child sexual abuse.²¹⁹ These cultures were often based in traditions and practices that acted as institution-wide barriers to reporting child sexual abuse to an external authority – for example, the inviolability of the confessional seal in the Catholic Church.²²⁰ Further information on how the traditions and practices of religious institutions can impact on reporting of child sexual abuse is contained in Volume 16, *Religious institutions*.

Some institutions may discourage reporting because of negative institutional cultural attitudes towards children and childhood. These institutions value unquestioned deference to adults and view children as unreliable and incapable of acting in their own best interests. Such attitudes can be exaggerated in some institutions, such as boarding schools and youth detention institutions, and where children have diverse needs due to disability, sexuality or cultural background. A research report prepared for the Royal Commission, *The role of organisational culture in child sexual abuse in institutional contexts*, observed that ‘when the cultures of organisations support the assumption that children are untrustworthy, staff members will be less likely to believe victims who report child sexual abuse’.²²¹ In this way, such cultures discourage reporting.

Research also suggests that some institutional cultures normalise child sexual abuse.²²² These include:

- macho cultures that condition boys to behave aggressively towards their peers and to tolerate harsh treatment from peers or adults.²²³ When children within these institutions exhibit harmful sexual behaviours, adults associated with the institution sometimes characterise their behaviour as just ‘boys being boys’²²⁴
- institutional cultures that endorse child sexual abuse, as well as other types of abuse (such as bullying), as an inherent part of organisational life²²⁵
- institutional cultures that support behaviours associated with grooming²²⁶
- institutions with sexualised cultures, which permit sexualised behaviours such as the use of sexualised language and consumption of sexualised media or pornography.²²⁷

These institutional cultures can create barriers to reporting because, if child sexual abuse is normalised, adults associated with the institution are unlikely to regard it as behaviour that should be reported to an external authority.

Case Study 21: The response of the Satyananda Yoga Ashram at Mangrove Mountain to allegations of child sexual abuse by the ashram's former spiritual leader in the 1970s and 1980s is an example of how institutional cultures that normalise child sexual abuse can prevent reporting. In the case study, 11 survivors gave evidence that they were sexually abused as children by the leader of the yoga ashram, Akhandananda.²²⁸ We found that Shishy, who was second in command at the ashram,²²⁹ was aware that Akhandananda was sexually abusing at least two of these children.²³⁰

Although Shishy was aware that Akhandananda's conduct was criminal, she did not report it to external authorities – and thereby did not protect children from further abuse.²³¹ Shishy gave evidence that the culture of the ashram was 'not normal' and that she did not fully appreciate that the abuse was wrong until she left the ashram.²³² She said that she did not see child sexual abuse as abuse²³³ during the time she lived at the ashram. Such an attitude demonstrates the degree to which the ashram culture normalised this abuse.

Power structures

Power structures in an institution may create barriers to reporting.²³⁴ For instance, higher level staff may use their formal power to intimidate their subordinates from reporting any child sexual abuse that they may have observed.²³⁵

During *Case Study 32: The response of Geelong Grammar School to allegations of child sexual abuse of former students (Geelong Grammar School)*, Mr Paul Claridge, the deputy master of Highton campus in 1989, gave evidence that he felt 'constrained' about doing more to report child sexual abuse to the authorities by the hierarchical structure of the school.²³⁶

In our private sessions, some teachers told us that they voiced concerns about child sexual abuse to their school principal, only for the principal to be dismissive, and to tell them they were overreacting and not to pass the report to the relevant authorities.²³⁷ We also heard of cases where school staff would not raise concerns about child sexual abuse because they feared losing their jobs.²³⁸ One private session attendee, who worked as a teacher's assistant in the 1990s, told us that her colleagues did not listen to or act on her concerns about a male teacher whom she suspected of child sexual abuse because 'it was all people holding onto their jobs and nobody wanted to speak up'.²³⁹

Research indicates that informal power differentials may also influence the degree of reporting of child sexual abuse.²⁴⁰ For example, if an adult associated with an institution is thought to possess skills or expertise that the institution relies on, and therefore would be difficult to replace, others are less likely to act against that person.²⁴¹

Institutionalised organisations

Some sociologists argue that organisations can become ‘institutionalised’.²⁴² Our research has noted that in an institutionalised organisation, members can view the institution as an end in itself, independent of the goals it was established to pursue.²⁴³ As a result, defence of the organisation can take on paramount importance in the minds of its members.²⁴⁴ Individuals in the organisation perceive threats to its image as issues to be managed in a way that minimises their negative impact on the organisation.²⁴⁵ Members tend to regard external criticisms as threats, and institutional cultures of secrecy can develop around information that is likely to result in criticism of the organisation.²⁴⁶

Because complaints of child sexual abuse can damage the reputation of the institution concerned, institutionalised organisations are likely to stay silent about the complaints and manage them in-house.²⁴⁷ Institutionalised organisations are not the only institutions that develop cultures of secrecy; however, their nature increases the likelihood that such cultures will arise.

In Case Study 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions, we were told that the responses of leadership groups to adverse experiences of survivors and their families were perhaps in part to protect the reputations of the individuals or the institutions concerned.²⁴⁸ The evidence identified that the rabbis had significant influence on the thinking and conduct of the members of the Yeshiva Bondi and Yeshivah Melbourne communities, and particularly on their responses to child sexual abuse.²⁴⁹ Witnesses described the communities as ‘insular’, and the evidence revealed that some members of the communities had a limited level of engagement with the secular world.²⁵⁰ In addition, there was considerable evidence that some members of the community believed that reporting a Jewish person to secular authorities was prohibited by either Jewish law or accepted principle.²⁵¹ We concluded that the leadership did not create an environment conducive to the communication of information about child sexual abuse.²⁵²

Total institutions

In addition to the institutional barriers to reporting that we have outlined above, research we commissioned identified barriers that are specific to ‘total institutions’.²⁵³ A total institution is one that envelops its members in a more comprehensive way than other forms of institutions.²⁵⁴ The total institution intends to shape the way its members live and behave, and to that end, its staff exert a great degree of control over the lives of members.²⁵⁵ Staff in total institutions can view children in negative ways and as undeserving of ethical treatment.²⁵⁶ This has the capacity to further deter reporting of misconduct against children. Examples of total institutions identified in the research literature, some of which are institution types we heard about during the course of the Royal Commission, include boarding schools, immigration detention centres, military academies, youth detention facilities and children’s residential institutions.²⁵⁷ However, the degree to which institutions display the characteristics of a total institution can vary.²⁵⁸

Volume 15, *Contemporary detention environments* discusses youth detention and immigration detention – both institution types that exhibit characteristics of total institutions. Volume 11, *Historical residential institutions* discusses historical residential institutions in Australia, including the institutions examined in *Case Study 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay (Parramatta Training School for Girls)* and the *Youth detention centres, Victoria* case study. Research refers to these types of institutions as ‘quintessential total institutions’.²⁵⁹

One of the main barriers to reporting in total institutions is the presence of power dynamics that are authoritarian in nature. As noted above, power structures can deter reporting in all institutions. However, in institutions resembling total institutions, power differentials are more extreme and the norm of obedience to authority is strong.²⁶⁰ In these institutions, the strong norm of obedience to authority may inhibit the ability of adults associated with the institution to report child sexual abuse perpetrated by their peers or superiors.²⁶¹ Adults associated with the institution may be prevented from reporting to external authorities if higher level staff disapprove of this occurring.

The *Parramatta Training School for Girls* case study demonstrates the authoritarian power structures that can exist in institutions and how these can prevent reporting. This case study examined child sexual abuse in two state-run institutions in New South Wales that housed girls from the welfare or youth detention systems.²⁶²

We heard evidence that the alleged perpetrators included 11 male staff members, most of whom had positions of authority as superintendents or deputies.²⁶³ Survivors gave evidence that they believed other staff at the institutions were aware of the sexual abuse.²⁶⁴ Despite this, these staff members did not report the abuse to external authorities, possibly because of the authoritarian power hierarchy among staff. One victim, Ms Jennifer McNally, gave evidence that when she made a complaint about the abuse to a female officer employed at the Parramatta Training School for Girls, the officer’s response was ‘I don’t know what we can do about it’.²⁶⁵ Another survivor, Ms Robyne Stone, gave evidence that women who worked at the institution were not allowed to talk about anything, were not allowed to complain about how the residents were treated and generally had no power as female officers.²⁶⁶

Informal group dynamics can present another barrier to reporting in total institutions. Individuals connected to institutions often form informal groups with others in the institution with whom they have shared understandings.²⁶⁷ In total institutions, staff and children can form opposing groups.²⁶⁸ One of the main imperatives in informal institutional groupings is to support group members over and above those outside the group.²⁶⁹ This imperative can create a barrier to staff reporting child sexual abuse perpetrated by other staff members.

Our *Youth detention centres, Victoria* case study exemplifies the informal group dynamics that may develop in institutions.²⁷⁰ We heard evidence that the staff of the Victorian youth detention centres examined in the case study defended other staff members against complaints of child sexual abuse made by children who lived at the centres.²⁷¹ One survivor gave evidence that following her complaint that her social worker, Mr Ross McIntyre, had sexually abused her, a staff member told her she was lying and that Mr McIntyre was a 'lovely person'.²⁷² Another survivor stated that when she complained about sexual abuse by a staff member, a female officer at Winlaton Youth Training Centre slapped her and said:

How dare you make up such dirty lies about one of my staff members. You are nothing but a dirty little lying bitch. Girls like you are why we have places like this, because you need to be taught to tell the truth.²⁷³

In a climate of such polarised group dynamics, where staff defended other staff members accused of sexual abuse and regarded residents with contempt, complaints of sexual abuse by staff were often not reported to external authorities. We heard evidence in the *Youth detention centres, Victoria* case study that senior managers in the youth detention centres held formal responsibility for reporting alleged sexual abuse in the centres to Victoria Police.²⁷⁴ However, some middle-level staff prevented child sexual abuse complaints escalating to senior management for reporting.²⁷⁵ We found that it was highly likely that incidents of sexual abuse in the centres were ultimately not reported to the police.²⁷⁶

Personal barriers

In our inquiry we learnt that some barriers to reporting arise from the characteristics of individual reporters. A potential reporter's knowledge, attitudes, previous experiences, fears and concerns can act as barriers to reporting known or suspected child sexual abuse. These personal barriers to reporting are closely connected to institutional barriers. For example, an individual may be reluctant to report because of fear of the consequences of reporting – such as when the abuse occurs in an institution with an authoritarian culture that victimises staff who are perceived to have stepped out of line.

Personal relationships

Personal relationships between a potential reporter and other members of an institution can deter reporting. Research we commissioned suggests that:

In the context of organisations delivering services to children and young people, staff may be reluctant to report co-workers whom they suspect or even believe are engaged in child sexual abuse, fearing that this would disrupt their valued relationships with the perpetrators as well as other staff members who might support them.²⁷⁷

Where the subject of a report is a colleague or friend, the potential reporter may experience disbelief or shock at the prospect that the person may have perpetrated child sexual abuse. These emotions can be exacerbated for potential reporters where strict moral or religious codes regulate sexual behaviour in their institution.²⁷⁸ Disbelief and shock may form a psychological barrier to reporting, and also lead to the individual minimising the seriousness of the behaviour.²⁷⁹

The research report *Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts* also suggests that psychological barriers to reporting may arise from cognitive biases that cause individuals in institutions to explain away the concerning behaviours of colleagues:

The slowness to think ill of a colleague ... is likely to be a particularly strong factor in the case of sexual abuse because the offence is so repugnant to most people. While minor misconduct such as stealing office stationery can be acknowledged without radically altering your opinion of a person, paedophilia generally arouses very negative feelings in people. Suspecting that a colleague is a person who sexually abuses children will conflict strongly with any positive feelings they may have had for them.²⁸⁰

We have heard about personal relationships creating psychological barriers to reporting.²⁸¹ For example, social services provider Life Without Barriers submitted that ‘too often we hear phrases like “I can’t believe that person did this – they were such a likeable person”’.²⁸² The Truth, Justice and Healing Council, which represented the Catholic Church before the Royal Commission, submitted that ‘staff who have worked alongside someone or come to know a person in the course of their work or social setting, can at times be unwilling to recognise reportable behaviour for what it is’.²⁸³ Further, in *Case Study 50: Institutional review of Catholic Church authorities*, we heard evidence from Father Thomas Doyle that ‘Ordinarily, the reason for failure to report is ... “I know this guy, I don’t want to get him in trouble”’.²⁸⁴

Personal relationships between adults associated with an institution may also create conflicts of interest that form barriers to reporting.²⁸⁵ For example, in schools – particularly in regional or remote areas, or in certain cultural communities – there are often close personal relationships between the principal, board members, staff, parents, police officers and the broader community, which can create conflicts of interest.²⁸⁶ Such conflicts may override policies and procedures that require child sexual abuse to be reported.²⁸⁷

In some of our case studies, we saw familial relationships act as a barrier to reporting.²⁸⁸ For example, in the *Centres for performing arts* case study, Ms Rebecca Davies accepted that when she communicated with the police in 2007 about allegations of child sexual abuse made against her brother, Grant Davies, she did not tell the police about Grant Davies’s admission that he had conversed with a student about a sex dream.²⁸⁹ Ms Davies accepted that she ‘certainly could have told [the police] so much more’.²⁹⁰ Ms Davies said that ‘the fact that Grant Davies was my older brother affected and indeed impaired my judgment and my objectivity, particularly in relation to the 2007 incident’.²⁹¹

Potential reporters can also be influenced by the nature of their relationship with a child victim and their generational or cultural views about children. The Truth, Justice and Healing Council submitted that ‘despite the existence of sound guidelines concerning how to treat disclosure by a child of sexual abuse, there still exists in some cases a tendency to disbelieve the child and/or the information’.²⁹² A 2009 survey of Australian attitudes towards child abuse (including, but not limited to, child sexual abuse) supports this comment. The survey found that 32 per cent of respondents believed that children make up stories about being abused.²⁹³

In a private session, ‘Meghan’ told us that her school teachers did not believe her disclosure of sexual abuse, in part because of their experience with and attitude towards her.²⁹⁴ ‘Meghan’ said she disclosed the abuse several times to teachers at her school and always received an angry and dismissive response.²⁹⁵ She said that ‘once again the child who was already blaming herself for all these things had an adult put that on her, reinforce it’.²⁹⁶ Similarly, during our consultations with children and young people in a youth detention centre, we were told that staff were often dismissive of young people’s complaints and believed other staff over victims.²⁹⁷

Concerns about consequences

Potential reporters may have fears and concerns about the responsibility and consequences of making a report. People with Disability Australia observed that:

In most cases where we have encountered staff of institutions who were aware of child sexual abuse but did not report, we have found that they feared retribution from above, not unreasonably or without grounds.²⁹⁸

We have heard that fears and concerns about reporting include that:

- the institution, community, reporter, or subject of the report may face reputational damage²⁹⁹
- the reporter may not be believed or ‘taken seriously’³⁰⁰
- the reporter may face negative career ramifications³⁰¹
- the reporter may face personal retribution³⁰² such as
 - physical reprisal³⁰³
 - family and social ostracism, bullying and isolation.³⁰⁴ A private session attendee who is a mandatory reporter told us that reporting ‘doesn’t win you friends in some quarters’.³⁰⁵ Such fears are exacerbated in some culturally and linguistically diverse communities where networks may be smaller and individuals may not want to risk losing social support from the community³⁰⁶
 - community backlash,³⁰⁷ where the community rallies around the subject of a report and shuns the reporter.³⁰⁸ This has occurred in circumstances where the subject of a report is highly regarded in the institution and the broader community,³⁰⁹ and in marginalised communities that want to avoid criticism or negative attention³¹⁰

- the reporter may come under pressure not to report,³¹¹ both from within and outside the institution. For example, the community may exert this pressure due to fears of a negative response from government authorities and outsiders if child sexual abuse is revealed.³¹² This pressure may also arise due to threats from the alleged perpetrator³¹³
- reporting may create disharmony in the community linked to the institution³¹⁴
- reporting may cause government intervention in a community.³¹⁵ For example, a stakeholder commented that in the Northern Territory, fear of another intervention or removal of children from a community may deter staff and volunteers who work with Aboriginal and Torres Strait Islander communities from reporting³¹⁶
- the reporter may be marginalised or subjected to racism³¹⁷
- the reporter may risk falsely accusing a colleague³¹⁸ or otherwise making an error of judgment,³¹⁹ leading to fears of being held civilly or criminally liable, or in breach of professional codes of conduct
- the reporter may need to be a witness in criminal proceedings against the subject of the report.

Protecting reporters and maintaining their confidentiality are important assurances for potential reporters, especially where:

- the institution has a poor history of keeping complaints confidential
- the reporter is unaware of or has misconceptions about the legal protections afforded to them
- the reporter is afforded no or few legal protections
- the reporter lives or works in a small, tight-knit community where it may be difficult to remain anonymous.³²⁰ We were told that although a reporter's identity is protected by law, their identity may be obvious in a small or remote community.³²¹ In these circumstances, individuals may fear having to move out of their community.³²²

Research suggests that one of the concerns felt by mandatory reporters is a fear of reprisal, which is closely linked to concerns about the disclosure of the mandatory reporter's identity.³²³ While mandatory and voluntary reporters are generally protected from legal liability where they make a report in good faith,³²⁴ they have few legislative protections against reprisals.³²⁵ Reprisals generally arise because the culture of an institution allows this to happen. The current absence of reporter protections against reprisals contributes to institutional cultures where reprisals may occur and where the reporter has no legal remedy to fall back on when they do. To eliminate the risk of reprisal, cultural change can be driven by legislative protections for reporters. This is further discussed in Section 2.4.4, 'Inadequate protection for reporters'.

A potential reporter's concerns about the consequences of reporting are linked to the nature of an institution's leadership, governance and culture. We have learnt that where an institution's culture involves secrecy, silence or reprisals, potential reporters' concerns about negative repercussions are often reasonable.³²⁶ The less conducive an institution's culture is to reporting, the more fears and concerns potential reporters are likely to have.

Confusion about legislative requirements

A poor understanding of, or confusion about, reporting obligations can act as a barrier to reporting.³²⁷ Adults associated with an institution are often confused about reporting requirements because institutions have inadequate policies and procedures or inadequate training about the policies and procedures that do exist.³²⁸ For example, we heard that teachers can be unsure of what to do when they suspect or know about child sexual abuse.³²⁹ In *Case Study 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes (Toowoomba Catholic school and Catholic Education Office)*, a witness told us that she and another teacher, both of whom were mandatory reporters to Queensland's child protection authority, required help when responding to a complaint of child sexual abuse – even after consulting the school's student protection kit – and that she felt out of her depth.³³⁰

Potential reporters also may be uncertain that they have sufficient information or evidence to meet the threshold for making a voluntary or obligatory report of child sexual abuse to a government body.³³¹ The Truth, Justice and Healing Council submitted that a desire to have proof often prevents reporters from acting on an initial instinct.³³²

The *Geelong Grammar School* case study demonstrated how misconceptions about the threshold for reporting child sexual abuse to an external government authority resulted in a lack of reporting. Mr John Lewis, the Headmaster of Geelong Grammar School from 1980 to 1994, gave evidence that he would not report a complaint of child sexual abuse to the police unless he was satisfied beyond reasonable doubt that the allegations were true.³³³ He said, 'I don't think it was necessarily my business to report allegations to police until one had made every attempt you could to establish the truth or otherwise of the allegation'.³³⁴ Mr Lewis did not make clear the basis on which he decided that this was an appropriate position, and he did not persuade us that his views were reasonably held.³³⁵ He did not report to the police several complaints of child sexual abuse made to him during his time as the Headmaster of Geelong Grammar School.³³⁶

Research has found that employees in institutions are not always given written guidance on reporting thresholds and that they generally develop an understanding of thresholds from feedback they, or others who make reports, receive from management.³³⁷ Clarity about reporting thresholds is therefore closely linked to the institutional barrier of not having appropriate reporting policies and procedures in place. Adults associated with an institution must know of existing policies and procedures. To help facilitate reporting, institutions must give adults associated with an institution written guidance on reporting thresholds.

Expectation of a negative or unhelpful response

Adults associated with an institution may be deterred from reporting due to an expectation of a negative or unhelpful response from external authorities.³³⁸ An individual may have made a report in the past and received no response, or a slow or ineffective response.³³⁹ Alternatively, they may have received little or no support in making the report³⁴⁰ or felt overwhelmed or confused by the system.³⁴¹ For example, it was observed in *Little children are sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (Little children are sacred)* that some government and non-government service providers operating in Aboriginal communities in the Northern Territory were ‘ambivalent’ about reporting child sexual abuse.³⁴² This was because some of these service providers had experienced a negative response from the authorities when making a report, which had led to a view that reporting may not produce any ‘real change’.³⁴³

Expectations of a negative response may be influenced by past and contemporary experiences of injustice.³⁴⁴ For Aboriginal and Torres Strait Islander peoples, historic abuse and forced removal of children has created deep mistrust and an expectation of unhelpful responses from the police and government agencies.³⁴⁵ Further, contemporary systemic racism may have accustomed Aboriginal and Torres Strait Islander communities to an expectation of a poor response to reports of child sexual abuse, resulting in a loss of hope in the system.³⁴⁶

Expectations can also be shaped by experiences in other countries. In public forums with multicultural stakeholders, we were told that more recently arrived migrant and refugee populations may not report child sexual abuse due to negative experiences with government authorities in their countries of origin.³⁴⁷ These communities may also fear that reporting would negatively affect their immigration status.³⁴⁸ For example, we heard of one instance where a refugee family asked a teacher not to discharge their mandatory reporting obligations and report to a child protection authority for fear of having their immigration status revoked.³⁴⁹

Communication barriers

Barriers to reporting may arise where there is a lack of attention to communication difficulties or differences.³⁵⁰ For example, a potential reporter may require assistance to communicate concerns due to disability, or may need access to information about reporting in a language other than English, or access to a language or cultural interpreter to make a report. This is a particular concern in the Northern Territory, where every person is a mandatory reporter to child protection. The Northern Territory’s *Little children are sacred* report observed that:

For many people, English is not a first language. Given that education and information regarding child sexual abuse is invariably provided in English, this can result in ineffective communication.

...

At one community meeting in the Top End, the participants were asked if they understood what mandatory reporting meant. They responded that they were unsure as it was English language which they did not understand well, and they needed to explain it in their own language.³⁵¹

Chapter 3, 'Improving institutional responses to complaints of child sexual abuse' contains information on how equity and diverse needs should be considered in the context of complaint handling.

2.4.3 A lack of training, education and guidance

A lack of adequate training, education and guidance on reporting has been consistently highlighted in the literature.³⁵² In our case studies, we learnt that this has resulted in poor awareness and understanding on the part of adults associated with institutions of when and how to report to external authorities.³⁵³ This has led to under-reporting of child sexual abuse in institutional contexts and increased the risk of harm to children.³⁵⁴

For example, in *Case Study 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, the evidence indicated that the school had inadequate policies and procedures for reporting.³⁵⁵ Mandatory reporting of physical and sexual abuse to the then NSW Department of Community Services was introduced for teachers at non-government schools in January 1988.³⁵⁶ Despite this, Knox Grammar School did not put child protection policies in place. We found that between 1988 and 1998 no system existed at Knox to train or educate staff about their mandatory reporting obligations.³⁵⁷ We heard evidence that in 1989, the school's then Headmaster, Dr Ian Paterson, was not aware of his mandatory reporting obligations.³⁵⁸ After receiving a complaint of child sexual abuse from a student against a teacher, Dr Paterson did not contact the NSW Department of Community Services as he was obliged to do.³⁵⁹

This section discusses training, education and guidance for individuals who are obliged to report under the three main obligatory reporting models: mandatory reporting to child protection authorities, 'failure to report' offences and reportable conduct schemes. It gives an example of how institutions in allied sectors could collaborate and pool resources to provide their staff and volunteers with such guidance.

Mandatory reporting to child protection authorities

Training for mandatory reporters

The quality, focus, frequency, mode of delivery, and time and resources allocated to the training and education of mandatory reporters to child protection authorities varies across jurisdictions and institution types.³⁶⁰ No national requirement exists for mandatory reporters to receive training and education on their reporting responsibilities.

In some institutions, mandatory reporters are not provided with training and education on how to report child sexual abuse to child protection authorities. We heard examples of this occurring even in institutions with policies that stated that training would be provided. For example, we heard in our *YMCA NSW* case study that although YMCA NSW had an induction policy stating that staff and volunteers should be informed of child abuse risks and indicators and of mandatory reporting obligations, the organisation did not comply with this policy.³⁶¹

Some mandatory reporters, particularly teachers, medical professionals and police officers, undertake training on their mandatory reporting responsibilities as part of their workplace induction, with subsequent regular refresher training.³⁶² In *Case Study 51: Institutional review of Commonwealth, state and territory governments (Institutional review of Commonwealth, state and territory governments)*, we heard that in the Australian Capital Territory, mandatory reporters in the law enforcement, education and health sectors are required to undertake regular training.³⁶³

During *Case Study 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009 (Perth independent school)*, we were told by the school headmaster that all staff must complete one training session on their obligations regarding mandatory reporting to child protection authorities³⁶⁴ and that staff are reminded of their mandatory reporting responsibilities at the professional development day that takes place at the start of each year.³⁶⁵

Similarly, in the *Toowoomba Catholic school and Catholic Education Office* public hearing, we heard evidence from Mr Terence Hayes, former Principal of the primary school examined in the case study, that school staff received training from the Catholic Education Office on an annual basis regarding their mandatory reporting requirements.³⁶⁶ Despite this training, Mr Hayes did not report allegations of child sexual abuse made against one of the school teachers to external government authorities.³⁶⁷

Dedicated units

Some institutions or sectors with staff members who have mandatory reporting obligations to child protection authorities have units dedicated to providing training, guidance and advice to reporters. During stakeholder consultations, we heard about the benefits of these dedicated units.³⁶⁸ A mandatory reporter from the schools sector told us that when it came to making a mandatory report of institutional child sexual abuse, ‘it really helps to know that you have people around you – whether that be system people or other supports – that will come in and rally behind you and support you’.³⁶⁹ However, we heard that such dedicated units are more common in the government than the non-government sector, and that this gap should be filled.

For example, in Queensland, government school principals can contact one of seven dedicated regional child safety officers for advice on their and their staff members' mandatory reporting requirements.³⁷⁰ We heard that the child safety officers are limited to government schools primarily because of the different funding arrangements for government and non-government schools.³⁷¹ Due to these arrangements, there is an expectation that non-government schools provide their own guidance.³⁷² However, a Queensland Government representative told us that there may be potential for non-government schools to access the regional child safety officers if requested.³⁷³

In New South Wales, Child Wellbeing Units (CWUs) operate in the four government agencies that account for most mandatory reports to the Department of Family and Community Services Child Protection Helpline: FACS, the NSW Police Force, NSW Health, and the NSW Department of Education.³⁷⁴ The CWUs in these agencies advise, support and educate staff who are mandatory reporters – police officers, health professionals, and education and community services staff – including by helping them to identify whether a risk of harm to a child or young person warrants a mandatory report.³⁷⁵ Mandatory reporters who do not have access to a CWU are advised by the Department of Premier and Cabinet to use the New South Wales Mandatory Reporter Guide to assess whether their concerns for a child or young person reach the threshold for reporting to FACS.³⁷⁶

A 2014 evaluation of the CWUs found that they were fulfilling their intended roles, and that they 'acted to refine the identification and quality of risk reporting'.³⁷⁷ The units had also 'substantially improved the understanding and awareness of mandatory reporters of their agency responsibilities, as well as the responsibilities of others in the child protection and wellbeing system'.³⁷⁸ However, Mr Michael Coutts-Trotter, Secretary of NSW FACS, told us that there is an ongoing need to improve the quality of reports referred to FACS by the units:

The Child Wellbeing Units have been very effective in a range of ways, but we still have a situation where mandatory reporters and staff of Child Wellbeing Units are nearly 50 per cent of the time reporting through matters that don't clear the threshold; so there is still a job of work for us to do.³⁷⁹

Mr Coutts-Trotter said that FACS was undertaking two pilot programs to better understand why mandatory reporters who have access to the units and other training, education and guidance are reporting matters that do not reach the risk of harm threshold.³⁸⁰ As part of the programs, FACS is testing whether providing these mandatory reporters with feedback about why the report did not meet the threshold and how the helpline responded to the report helps 'people to think about other ways to respond to a child's needs'.³⁸¹

Written guidance

All state and territory governments provide mandatory reporters with written guidance on their reporting duty on the website of their child protection authority. However, the quality and usefulness of this guidance varies by jurisdiction.

Common shortcomings include guidance that:

- is not written in plain English
- mostly cites the legislation verbatim, offering little assistance to mandatory reporters who do not have a legal background
- does not cover key aspects of mandatory reporting, such as who is a reporter and reporter protections
- is outdated
- is poorly presented. For example, the guidance is spread over multiple website pages and fact sheets that are not clearly linked, making it confusing to read.

Some jurisdictions, such as New South Wales and Queensland, have comprehensive mandatory reporter guides, which are structured decision-making tools that cover a range of scenarios and circumstances involving child abuse and neglect.³⁸² The guides systematically lead reporters through a series of questions to help them decide whether concerns meet the threshold for making a report to the designated helpline or agency and recommend a course of action based on the assessed level of risk. During our *Institutional review of Commonwealth, state and territory governments* case study, Mr Michael Hogan, Director-General of the Queensland Department of Communities, Child Safety and Disability Services, explained that the Queensland guide ‘allows people to work through what is required to meet their obligations or their concerns in relation to reporting’.³⁸³ Mr Coutts-Trotter gave evidence that the New South Wales guide allows for flexibility – namely, individuals can ‘override the suggestion that the guide might produce, so if people remain concerned they can and clearly do report’.³⁸⁴

A lack of written guidance for mandatory reporters in many institutional settings can impede those attempting to apply the relevant mandatory reporting legislation to real-life scenarios. We were told by a non-profit association that ‘a mandatory reporter guide (MRG) should be adopted by all state and territory governments to help professionals (and others) assess whether the information they have reaches a reportable threshold’.³⁸⁵

To avoid confusion, policy guidance should be developed to align with legislation, so that the guidance offered complies with legislative requirements. Where guidance goes beyond what is required under the relevant mandatory reporting legislation, this should be made clear to reporters. For example, under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) mandatory reporters must report the risk of significant harm to a child aged under 16.³⁸⁶ However, the New South Wales online mandatory reporter guide includes an option to report sexual abuse of a young person aged between 16 and 17.

‘Failure to report’ offences

In Victoria, institutions can access information about the offence of failure to disclose a child sexual offence through the websites of the Victorian Department of Justice and Regulation and Victoria Police.³⁸⁷

In New South Wales, there does not appear to be any specific training, education or guidance available to institutions on the offence of concealing a serious indictable offence.

Reportable conduct schemes

Institutions receive training and education on reportable conduct schemes primarily from the oversight body that administers the scheme. Institutions may also receive some information on the scheme through sector-specific training provided by regulators or peak bodies.

In New South Wales, the NSW Ombudsman facilitates capacity building and practice development across sectors by providing training and education to institutions that come under the state’s reportable conduct scheme. The training includes how to identify, report, handle and investigate reportable allegations and convictions.

The NSW Ombudsman also provides guidance to institutions that have reported under the state’s scheme or have sought advice from the Ombudsman.³⁸⁸ The Ombudsman publishes fact sheets, guidelines and reports about child protection.³⁸⁹ This guidance is particularly important for assisting institutions that have little experience with responding to complaints of child sexual abuse.

See Chapter 4, ‘Oversight of institutional complaint handling’ for more information on training and guidance regarding reportable conduct schemes.

Pooling resources

Some institutions have limited access to training, education and guidance on reporting child sexual abuse due to their size and resource and funding constraints. In some cases, such institutions have pooled their resources to address this gap. For example, in the sports sector, government and non-government bodies have collaborated to produce a website called Play by the Rules.³⁹⁰

Play by the Rules publishes fact sheets on the reporting of child abuse in each state and territory. These fact sheets:

- advise that the police should be contacted if a child or young person needs immediate assistance

- provide guidance on mandatory and voluntary reporting to child protection authorities under each jurisdiction's child protection legislation
- encourage the reporting of concerns that children have been or are being abused, and outline how reporting fits with a child safe organisation
- identify government authorities in each state and territory that can provide further information on the reporting of child abuse.³⁹¹

On the Play by the Rules website, the reporting fact sheet for Victoria also provides information about the Victorian offence of failure to disclose a child sexual offence.³⁹² However, the New South Wales version of this fact sheet does not provide guidance on any applicable reporting obligations under reportable conduct schemes or reporting offences in that state.³⁹³ In our view, educational material on reporting, such as that distributed by Play by the Rules, should include information on all applicable types of obligatory reporting, as well as options for voluntary reporting.

2.4.4 Inadequate protection for reporters

This volume generally distinguishes between complaints of institutional child sexual abuse made internally within an institution and reports made to an external government authority. However, in discussing legislative protection for individuals it is not always possible to draw a clear line between a complaint and a report. For example, public interest disclosure (or 'whistleblower') legislation in many jurisdictions provides that disclosures by employees may be made internally to the head of their agency and, in some circumstances, to an external authority such as an ombudsman or anti-corruption agency.³⁹⁴

The person or entity to whom a complaint or report must be made will vary according to the content of the complaint or report and the identity of the person who is the subject of the report. For the sake of brevity, throughout Section 2.4.4 the term 'reporter' refers to individuals making internal complaints and/or external reports, and 'reporting' also includes internal complaints.

Although there is legislative protection for reporters of child sexual abuse in every Australian jurisdiction, the adequacy of these protections varies. A lack of reporter protections can act as a barrier to both internal and external reporting. For example, legal advice service knowmore, told us that some clients had expressed a reluctance to report institutional child sexual abuse due to a fear of dismissal or reprisals in the workplace.³⁹⁵ Many reporters are reassured by the knowledge that they will not be held civilly or criminally liable for making a report in good faith.³⁹⁶ Similarly, it is important for reporters to be protected from reprisals if reporting is to be encouraged.

Chapter 3, 'Improving institutional responses to complaints of child sexual abuse' examines poor and inappropriate institutional responses to staff who make internal complaints, such as reprisals and inaction.

External reports

Protections for reporting are provided under child protection legislation, reportable conduct schemes, health practitioner regulation and healthcare complaints legislation, and education and care services regulation.³⁹⁷

There are gaps in reporter protections under each of these laws. These gaps relate to:

- protection from civil and criminal liability
- protection from reprisals or other detrimental action that may occur as a result of making a complaint or report of child sexual abuse.

Child protection legislation

As noted, child protection legislation in every state and territory provides protections for voluntary and mandatory reporters of child abuse and neglect.³⁹⁸

In all states and territories, voluntary reporters acting in good faith are protected from liability under child protection legislation (except the Northern Territory, where all persons are mandatory reporters and protected as such).³⁹⁹ In most states and territories, the protections applicable to mandatory reporters to child protection authorities also apply to voluntary reporters.⁴⁰⁰

As discussed in Section 2.3, child protection legislation generally does not protect mandatory or voluntary reporters from reprisals, but instead focuses on protection from liability. South Australia is the only jurisdiction to provide protection from reprisals for persons making reports under child protection legislation, but this applies only to mandatory reporters, not voluntary.⁴⁰¹ The protection consists of an offence of threatening or intimidating, or causing damage, loss or disadvantage to a mandatory reporter.⁴⁰² There is no civil remedy available under the South Australian legislation to the reporter in respect of the reprisal.

Reportable conduct schemes

Reportable conduct schemes provide some protection for individuals who disclose information to the relevant oversight body. For example, the *Ombudsman Act 1974* (NSW) provides protection from civil liability and workplace reprisal for employees who report or otherwise assist the Ombudsman under the scheme.⁴⁰³

In Chapter 4, 'Oversight of institutional complaint handling' we discuss options for strengthening reporter protections under reportable conduct schemes.

Health practitioners and services

Under the Health Practitioner Regulation National Law, which all states and territories have adopted,⁴⁰⁴ reporters to the Australian Health Practitioner Regulation Agency are given immunity from liability for reports made in good faith, and the making of such a report is not deemed to be a departure from accepted standards of professional conduct.⁴⁰⁵ The Health Practitioner Regulation National Law does not provide protection from reprisals. However, the New South Wales and Queensland governments have modified the law as it applies in their jurisdictions to provide some protection from reprisal, through extended operation of their healthcare complaints legislation.⁴⁰⁶

All states and territories have healthcare complaints legislation that allows certain persons to make complaints about registered, and some unregistered, health practitioners and health services to a health complaints commission or similar body.⁴⁰⁷ Reports may, in all states and territories, include complaints about child sexual abuse.

Healthcare complaints legislation offers some protection for reporters, including protection from liability for making a report.⁴⁰⁸ In all states and territories it is an offence to attempt to persuade another person not to complain to a health complaints commission or similar body, or to subject a person to detriment in relation to a complaint.⁴⁰⁹ In Queensland, it is an offence to cause detriment to another person because, or in the belief that, any person has made or may make a health service complaint,⁴¹⁰ and the legislation provides an entitlement to damages.⁴¹¹ Healthcare complaints legislation does not offer protection to persons making internal complaints to the health practitioner or health service concerned.

Education and care services

The Education and Care Services National Law, adopted by all states and territories,⁴¹² protects disclosures to the regulatory authority in each jurisdiction where the person making the disclosure reasonably believes that there is a risk to the safety, health or wellbeing of a child being educated and cared for by an education and care service.⁴¹³ The protection is provided by an offence of taking ‘serious detrimental action’ against another person in reprisal for a protected disclosure, compensation for reprisals and the capacity to apply for an injunction to stop the taking of serious detrimental action against a person who makes a protected disclosure.⁴¹⁴ There is no explicit protection under the Education and Care Services National Law from civil or criminal liability for making the disclosure.

Internal complaints

The legislative schemes discussed above generally only protect reporters to external authorities, such as child protection authorities or health complaints commissions. Legislative protection for internal complaints⁴¹⁵ of child sexual abuse is much less comprehensive.

New South Wales is the only state or territory that protects individuals making internal complaints of child abuse in its child protection legislation. Child protection legislation in New South Wales protects reporters where a complaint is made to a person who has the power or responsibility to protect the child or young person.⁴¹⁶ Therefore, it protects the making of certain types of internal complaint, such as a complaint to a principal in a school or a staff member of a residential care facility that a child or young person is at risk of significant harm.

However, the protection provided under New South Wales child protection legislation is the same as that provided to mandatory reporters – that is, the reporter does not incur certain legal liability, but there is no protection from reprisals. Further, the protection applies mainly to reports about children directly at risk,⁴¹⁷ and would not necessarily extend to a complaint that the institution itself had failed to respond adequately to allegations of child sexual abuse.

In all states and territories, teachers have mandatory reporting obligations under child protection legislation. Queensland legislation, in addition, provides that a staff member of a school who reasonably suspects that a student has been sexually abused, or is likely to be sexually abused, must immediately give a written report about the suspected abuse or likely abuse to the school's principal,⁴¹⁸ who must immediately give a report to a police officer.⁴¹⁹ Neither the staff member nor the principal is liable – civilly, criminally or under an administrative process – for giving the information contained in the report to a school principal or police officer.⁴²⁰

Public interest disclosure legislation

The Australian Government and all state and territory governments have public interest disclosure legislation, which provides protection for individuals reporting various forms of maladministration or corrupt or criminal conduct, mainly in the public sector.⁴²¹

This legislation may apply to complaints or reports of child abuse in certain circumstances. However, it is not designed for the reporting of child sexual abuse. Rather, it applies generally to the reporting of certain conduct in the public sector. Public interest disclosures about the conduct of individuals outside the public sector are protected in some jurisdictions, where such conduct could affect the exercise of functions by a public official.⁴²² The conduct of government contractors may also be the subject of protected reports in some jurisdictions.⁴²³

While the conduct that may be reported in each jurisdiction differs, in every jurisdiction a report of child abuse by a public official would be covered by the legislation, provided that other statutory criteria for reporting were fulfilled.

Many jurisdictions only protect reporters where there is a connection between the conduct being reported and the work or official functions of the subject of the report.⁴²⁴ The conduct that may be reported includes, in some jurisdictions, conduct that would constitute a breach of trust as a public official⁴²⁵ or, if proved, be a criminal offence⁴²⁶ or provide grounds for disciplinary action.⁴²⁷

Sexual abuse or grooming of a child would generally constitute such conduct (subject to establishing any necessary connection with the person's work). In Western Australia and South Australia, conduct that may be reported includes impropriety or improper conduct.⁴²⁸

At the federal level and in New South Wales, Queensland and Tasmania, the reporter must be a public official or former public official in order to be protected under public disclosure legislation.⁴²⁹ In the other jurisdictions, any person making a report of such kind is protected.⁴³⁰

A person making a public interest disclosure is not subject to any liability for making the disclosure.⁴³¹ The person is also protected from disciplinary action (except possibly in South Australia).⁴³² In addition, Commonwealth legislation provides that no contractual or other remedy may be enforced and no contractual or other right may be exercised against the individual based on the public interest disclosure.⁴³³

In all states and territories except Western Australia, South Australia and Tasmania, it is specifically provided that the individual has absolute privilege in proceedings for defamation in respect of the public interest disclosure.⁴³⁴

In all states and territories except South Australia, it is an offence to take a reprisal against another person in respect of a public interest disclosure⁴³⁵ and injunctions are available to prevent reprisals.⁴³⁶ In all states and territories, persons may bring civil proceedings to recover loss or damage as a result of a reprisal.⁴³⁷

In New South Wales, taking any detrimental action against a person that is substantially in reprisal for that person making a public interest disclosure is 'misconduct' within the *Government Sector Employment Act 2013* (NSW).⁴³⁸ This means that a public servant taking such detrimental action could be subject to disciplinary action, including termination of employment.⁴³⁹

The protection offered by public interest disclosure legislation to some individuals who make internal complaints varies between jurisdictions. At federal level and in the Australian Capital Territory, a protected public interest disclosure may be made to a supervisor of the reporter.⁴⁴⁰ In New South Wales, Queensland, Western Australia and the Northern Territory public interest disclosures may be made to the head of the agency responsible for the person who is the subject of the disclosure (which may be an internal complaint).⁴⁴¹ In New South Wales, some public interest disclosures may also be made to another officer of the public authority to which the reporter belongs.⁴⁴² In Victoria, a public interest disclosure may be made by an employee to their public service employer.⁴⁴³ In South Australia, a public interest disclosure may be made to 'a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure'.⁴⁴⁴

2.4.5 Issues with specific types of reporting

Reporting to an external government authority about allegations of historical institutional child sexual abuse and of harmful sexual behaviours being exhibited by a child are two contexts in which we heard of issues with reporting during our case studies and private sessions.

Complaints of historical child sexual abuse

We heard that there is confusion among mandatory reporters, as well as among institutions and oversight bodies, about their obligations to report complaints of historical child sexual abuse to an external authority.⁴⁴⁵

In *Case Study 10: The Salvation Army's handling of claims of child sexual abuse 1989 to 2014*, there was uncertainty between The Salvation Army and the NSW Office of the Children's Guardian about whether The Salvation Army needed to report a complaint of historical child sexual abuse to the Children's Guardian. We found that from 15 June 2013, The Salvation Army had an obligation under the *Child Protection (Working with Children) Act 2012* (NSW) to notify the Children's Guardian that in 1990 it had dismissed Mr Colin Haggar.⁴⁴⁶ We concluded that The Salvation Army's Director of Young Hope, Captain Michelle White, discharged that obligation by reporting the matter to the Children's Guardian on 4 September 2013.⁴⁴⁷ However, Mr David Hunt from the Children's Guardian told Captain White on 5 September 2013 that The Salvation Army did not have to report the findings about Mr Haggar because they were made before 1995.⁴⁴⁸ Mr Hunt was not aware that, from 15 June 2013, there was a duty to report historical matters to the Children's Guardian.⁴⁴⁹

In New South Wales, adults associated with an institution who are mandatory reporters to child protection authorities may be legally obliged to report allegations of historical child sexual abuse if they suspect that the subject of a report poses a current risk of significant harm to a child or a class of children.⁴⁵⁰ Despite this, obligations to report historical allegations are poorly understood by some mandatory reporter groups. For example, in *Case Study 27: The response of health care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse*, we found that the reporting obligations of medical practitioners in cases of historical child sexual abuse under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) were not well understood by medical practitioners.⁴⁵¹

Most jurisdictions provide little guidance to mandatory reporters about how to respond to a complaint of historical institutional child sexual abuse. Such reports enable child protection agencies to assess whether the subject of a report poses a current risk of harm to a class of children. In our view, every jurisdiction should include advice on how to respond to complaints of historical abuse in mandatory reporter guides.

New South Wales provides a useful model in this respect. The state's Mandatory Reporter Guide includes instructions on how to respond to disclosures of historical child abuse. The guide advises that an incident of past serious abuse of someone who is now an adult can be reported to the police.⁴⁵² Mandatory reporters are further advised that, after receiving a complaint of historical abuse, they should make a report to FACS if they suspect that a class of children is currently at risk of significant harm.⁴⁵³ In 2016, the NSW Ombudsman worked with FACS to update the Mandatory Reporter Guide after several cases demonstrated that mandatory reporters lacked guidance on how they should handle historical abuse complaints.⁴⁵⁴

Mandatory reporters may benefit from further education and training to encourage reporting of complaints of historical child sexual abuse to an external authority.⁴⁵⁵

Chapter 3 of this volume contains further information on responding to complaints of historical child sexual abuse.

Children with harmful sexual behaviours

In private sessions, we heard of instances where harmful sexual behaviours exhibited by a child in an institutional setting were not reported by adults associated with the institution to external government authorities.⁴⁵⁶ Harmful sexual behaviours exhibited by children warrant a different response than child sexual abuse perpetrated by adults in institutional contexts. Reporting of harmful sexual behaviours exhibited by children to external government authorities aims to:

- facilitate therapeutic treatment and support for the child exhibiting the harmful sexual behaviours
- enable the child protection and criminal justice systems to respond to the harmful sexual behaviours, including by assisting victims.

Volume 10, *Children with harmful sexual behaviours* contains further information on interventions for children with harmful sexual behaviours.

Victoria is the only jurisdiction that expressly provides for voluntary reports to child protection authorities about a child aged from 10 to 14 because the reporter believes the child has exhibited harmful sexual behaviours.⁴⁵⁷ Specific legislative protections are afforded to people who make such reports in good faith. They cannot be the subject of unprofessional conduct findings and are protected from civil and criminal liability.⁴⁵⁸

Once a report that a child is in need of therapeutic treatment has been made, the Secretary of the Victorian Department of Health and Human Services must, as soon as practicable, investigate the report ‘in a way that will best promote the provision of assistance and, where appropriate, therapeutic treatment to the child’.⁴⁵⁹ If the Secretary receives the report from a person other than a police officer, they may refer the matter to the Victorian Therapeutic Treatment Board for advice.⁴⁶⁰ On referral, the Therapeutic Treatment Board must provide advice to the Secretary as to whether it is appropriate to seek a therapeutic treatment order in respect of the child, and the Secretary must consider this advice.⁴⁶¹ If the Secretary confirms the need for therapeutic intervention, the child and their family can undertake this voluntarily or by order of the Children’s Court.⁴⁶²

These reporting arrangements are linked to a legislative obligation placed on the Secretary to investigate the harmful sexual behaviours and, where appropriate, to intervene for the purposes of therapeutic intervention.⁴⁶³ This increases the opportunity to intervene for the benefit of both the child with harmful sexual behaviours and the victims of such behaviours.

Mandatory reporting to child protection authorities

Child victims who have been harmed by children with harmful sexual behaviours may, but will not always, be the subject of mandatory reports to child protection authorities. There is no express provision in any state or territory mandatory reporting legislation for reporting that a child has exhibited harmful sexual behaviours. The child exhibiting harmful sexual behaviours can be reported under laws concerning mandatory reporting to child protection authorities if they are considered at risk of harm, or in need of care and protection for another reason.

‘Failure to report’ offences

Institutions will need to assess whether an alleged incident involving a child exhibiting harmful sexual behaviours needs to be reported to the police. In the first instance, this will depend on the age of the child with harmful sexual behaviours and the nature of the acts.

The Victorian offence of failure to disclose a child sexual offence only applies to offences committed by an adult.⁴⁶⁴ The New South Wales offence of concealing a serious indictable offence applies to acts committed by a ‘person’ without specifying the age of the person.⁴⁶⁵

Reportable conduct schemes

The New South Wales, Victorian and Australian Capital Territory reportable conduct schemes do not apply to children with harmful sexual behaviours.

2.5 Improving institutional reporting

Our work has shown that child sexual abuse in institutions has been widely under-reported in situations where the abuse was known or suspected.⁴⁶⁶ In many cases, adults who should have reported child sexual abuse to external authorities did not. In Section 2.4, we examined how inconsistency in obligatory reporting models, barriers to reporting abuse, and a lack of training, education and guidance all reduce the likelihood of individuals making a report of institutional child sexual abuse and contribute to systemic under-reporting.

In this section, we consider how to address these problems and improve the frequency, quality and timeliness of reporting of institutional child sexual abuse through legislative reforms and enhancements to leadership and culture, policies and procedures, and training, education and guidance.

The reporting of institutional child sexual abuse could be improved by making institutions child safe. This would create a focus on child safety, which would stimulate a culture where the reporting of child sexual abuse was supported and facilitated. Education and training and policies and procedures could also be utilised to ensure adults associated with institutions understand and have sufficient guidance on their reporting requirements.

Reforms to obligatory reporting models are also needed to improve reporting. We are satisfied that institutions, their staff and volunteers should be legally obliged to report institutional child sexual abuse to an external authority under at least one of the obligatory reporting models discussed in this chapter. For obligatory reporting to work effectively, obligations should be consistent across jurisdictions and the individuals who are obliged to report must be adequately protected when they do.

2.5.1 Child safe institutions

In Chapter 3 of Volume 6, *Making institutions child safe* we examine what makes institutions 'child safe'. Child safe institutions create cultures, adopt strategies and take action to prevent harm to children, including child sexual abuse. A child safe institution consciously and systematically:⁴⁶⁷

- creates conditions that reduce the likelihood of harm to children
- creates conditions that increase the likelihood of identifying and reporting harm
- responds appropriately to disclosures, allegations or suspicions of harm.

We have identified 10 Child Safe Standards that explain the essential elements of what makes an institution safer for children. The standards aim to guide institutions to become child safe, including how to better identify and respond to child sexual abuse. The standards are:

- Standard 1: Child safety is embedded in institutional leadership, governance and culture
- Standard 2: Children participate in decisions affecting them and are taken seriously
- Standard 3: Families and communities are informed and involved
- Standard 4: Equity is upheld and diverse needs are taken into account
- Standard 5: People working with children are suitable and supported
- Standard 6: Processes to respond to complaints of child sexual abuse are child focused
- Standard 7: Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
- Standard 8: Physical and online environments minimise the opportunity for abuse to occur
- Standard 9: Implementation of the Child Safe Standards is continuously reviewed and improved
- Standard 10: Policies and procedures document how the institution is child safe.

We recommend those institutions where ‘child-related work’ is being performed should be required to implement and meet the Child Safe Standards. The standards aim to drive cultural change in institutions to ensure the best interests of children – including their safety and wellbeing – are paramount. The standards also aim to make it easier for institutions, their staff and volunteers to externally report known and suspected child sexual abuse.

Improvements in reporting by institutions to external government authorities would create opportunities for these government authorities across jurisdictions to identify risks and consequently improve their monitoring and make better enforcement decisions to secure children’s safety. Monitoring and the enforcement of children’s safety in institutions are discussed in Volume 6, *Making institutions child safe*.

Each of the Child Safe Standards is of equal importance and all 10 standards are interrelated. While all the standards are necessary for creating child safe institutions, those discussed in this section would help to remove institutional and personal barriers to reporting.

Leadership, governance and culture

Child Safe Standard 1 will embed child safety in institutional leadership, governance and culture, helping to support reporters. Institutional leaders must actively work to guard against cultures that obstruct or prevent the reporting of child sexual abuse. The Association of Independent Schools of New South Wales submitted that ‘A key component of child safe organisations is a culture of reporting concerns without fear of negative repercussions for individuals or their careers’.⁴⁶⁸ Research has observed that:

in order to further shift an institution’s priority from damage control to honest recognition of abuses that may occur within its ranks, recognizing and reporting abuse must be viewed as an honourable action.⁴⁶⁹

An institutional culture that supports and encourages reporting, and makes reporting a normal and expected part of its operations, enables reporting in practice. In the *Perth independent school* case study, Professor Stephen Smallbone, a psychologist with expertise in child safety in school environments, assessed the school’s response to institutional child sexual abuse by reference to present-day standards of best practice. Professor Smallbone told the Royal Commission that:

ultimately, for an environment that is conducive to staff reporting concerns, an organisational culture is required in which prevention of child abuse is accepted as an ordinary responsibility of all adults. This requires leadership from senior management and staff. It also requires that reported concerns should be taken seriously and staff who express a concern should be informed of any action taken.⁴⁷⁰

Some private sessions attendees and participants in our private roundtable on schools who had experience in reporting child sexual abuse told us that institutional acknowledgement and understanding of what it takes to make a report made them feel reassured about discharging their reporting obligations.⁴⁷¹ One private session attendee said that, ‘the reporter needs to be greatly support[ed] within the organisation and I think that’ll bring around a culture change if ... people know that they can go and report incidents and be supported by their management’.⁴⁷²

Timely and quality reporting of child sexual abuse to an external government authority is an important part of creating child safe institutions. Reporting should be seen in the context of an institutional culture of shared responsibility for keeping children safe.⁴⁷³ It is the moral and ethical action to take. We recommend in our *Criminal justice* report that any adult associated with an institution who knows or suspects or should have suspected that a child is being or has been sexually abused by another adult associated with the institution should report the abuse to police. Recommendation 32 of our *Criminal justice* report states:

Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police (and, if relevant, in accordance with any guidelines the institution adopts in relation to blind reporting under Recommendation 16).⁴⁷⁴

Staff education and training

Child Safe Standard 7 provides that staff and volunteers receive training and education on child protection practices, which would include reporting obligations. We recommend that training and education, like the other standards of our child safe institutions framework, be made mandatory for most child-related institutions.

Contextually appropriate training and education for institutions' staff and volunteers about the reporting of child sexual abuse is important for three reasons. First, training and education helps to equip individuals with knowledge about applicable legal or policy-based reporting obligations and enables them to identify, respond to and report risks and incidents of child sexual abuse (and thereby fulfil any reporting obligations).⁴⁷⁵ Second, training and education assist to improve the quality of reports. Third, thorough training and education demonstrates a commitment by institutions to child safety and shows their support of reporting.

Training and education in institutions should empower staff with the knowledge, skills and attitude to report concerns.⁴⁷⁶ After induction training and education, staff and volunteers should understand:⁴⁷⁷

- their reporting obligations under relevant legislation and policy
- the reporter protections applicable to them
- what conduct should be reported (including legal definitions of abuse and practical examples)
- when conduct should be reported
- the reporting mechanisms available to them
- how to make a report using these mechanisms (including what information to include in a report)
- how to seek assistance
- how to assist the child and how to look after themselves.

Training and education on reporting child sexual abuse should be offered at least annually, either face-to-face or online.⁴⁷⁸ Face-to-face training 'may be especially helpful to work through potential barriers to identifying and reporting concerns, such as natural tendencies to protect colleagues' and the school's reputation, or fears of being ostracised'.⁴⁷⁹ Training should be flexible enough to meet the needs of staff and volunteers with varied levels of knowledge and understanding of how to identify and report child sexual abuse.⁴⁸⁰ Management should monitor whether staff and volunteers have completed the training, and whether they understand their reporting obligations.⁴⁸¹ Institutions' leaders and child safety officers should undertake advanced training on reporting.

Training of staff and volunteers in institutional settings on how to identify and report child sexual abuse needs to cover the issue of reporting colleagues and other members of an institution. It is important, for example, to avoid limiting such training to that which focuses entirely on reporting familial sexual abuse, with no reference to abuse perpetrated by staff or volunteers of the institution. Staff and volunteers should be aware of the barriers that could stop them from acting on concerns about colleagues; they also need to be informed about how and where to report these concerns. Training and education on reporting could be improved through increased use of sector- or institution-specific training scenarios. Governments and institutions should assess and address these potential gaps in training and education.

Institutions and state and territory governments should periodically review and update training content and delivery methods to identify opportunities for improvement and keep pace with research on effective components of training and delivery mechanisms. For example, although research has not yet isolated the specific attributes of optimal training or the precise mechanisms of their operation,⁴⁸² some academics have argued that training and education for reporters should aim to boost a reporter's affective attributes. On one level, this can be aimed at enhancing attitudes towards the reporting duty.⁴⁸³ On another more sophisticated level, it can be aimed at enhancing reporters' empathy towards the child victim.⁴⁸⁴

Mandatory reporting to child protection authorities

As explained in Section 2.4, 'Problems with reporting institutional child sexual abuse', the training, education and guidance provided to mandatory reporters is lacking in many institutional settings. In our view, where the government obliges individuals to carry out a reporting duty, it should ensure those individuals are provided with adequate assistance and support to effectively discharge the duty.

In Section 2.4, we identified that the usefulness and quality of written guidance for mandatory reporters varies by jurisdiction. The absence of current, clear and accessible mandatory reporter guides in some jurisdictions to assist with structured decision-making is problematic. These guides should be a valuable resource for mandatory reporters on a range of practice issues. We recommend that state and territory governments that do not have a mandatory reporter guide should introduce one and require its use by mandatory reporters. The New South Wales and Queensland mandatory reporter guides are helpful models in this respect.

We also identified a lack of access to a dedicated advice service for mandatory reporters as a gap that needs to be addressed. Research has indicated that mandatory reporters can benefit from having ‘access to a form of advisory service’ that can provide useful advice on specific circumstances as they arise.⁴⁸⁵ Providing reporters with the opportunity to discuss concerns with an experienced practitioner may assist them to ‘more accurately interpret the observed behaviour in its context or to work out what additional information could help them make sense of what is worrying them’.⁴⁸⁶ Associate Professor Kerryann Walsh, Faculty of Education, Queensland University of Technology, submitted that supporting school staff to identify and report child sexual abuse should include ‘independent and confidential assistance via employee assist services, and access to specialist legal advice where required’.⁴⁸⁷ We recommend that state and territory governments work with institutions, peak bodies and other relevant stakeholders to ensure that all mandatory reporters in a given jurisdiction have access to experts who can provide advice on their reporting obligations.

Recommendation 7.1

State and territory governments that do not have a mandatory reporter guide should introduce one and require its use by mandatory reporters.

Recommendation 7.2

Institutions and state and territory governments should provide mandatory reporters with access to experts who can provide timely advice on child sexual abuse reporting obligations.

Policies and procedures

Child Safe Standard 10 recommends that an institution’s policies and procedures document how the institution is child safe. Institutions, their staff and volunteers need guidance on when and how to report child sexual abuse in accordance with relevant government legislation and policies. This guidance should be provided in an institution’s relevant policies and procedures, such as child protection and complaint handling. An institution’s policies and procedures should reflect its commitment to supporting staff and/or volunteers who report child sexual abuse. Specific to reporting, these policies and procedures should cover:

- reporting obligations – an institution should explain in its relevant policies and procedures the obligations that adults associated with the institution, and the institution itself, have when reporting. They should plainly set out how these obligations are satisfied
- voluntary reporting – where legal obligations to report do not exist, policies and procedures should clearly state that adults associated with the institution can and should voluntarily report child sexual abuse allegations to the police and/or the relevant child protection authority. Policies should canvass options for voluntary reporting to an external authority and include information on any relevant legislated voluntary reporter protections

- reporter protections – reporter protections may allay reporters’ fears about breaches of confidentiality, civil and criminal liability and reprisals and, therefore, facilitate reports of institutional child sexual abuse. For this reason, institutional policies and procedures should provide information on reporter protections that covers both obligatory and voluntary reporting. This would enable adults associated with the institution to understand what protections apply to them.

Institutions may access advice and support from government oversight schemes to enhance their policies and procedures. For example, in New South Wales, agencies that fall under the NSW Ombudsman’s reportable conduct scheme can seek the Ombudsman’s advice about policies and procedures to report and handle child sexual abuse.⁴⁸⁸

2.5.2 Legislative change

Over the course of our inquiry, we heard of many cases where an adult who had no reporting obligations, but who knew or suspected institutional child sexual abuse, chose not to voluntarily report the suspected abuse to external government authorities. Today, many adults across Australia who work closely with children can still choose not to report institutional child sexual abuse because they are under no legal obligation to do so.

Victims, survivors, witnesses and other stakeholders told us that they support legally requiring institutions, their staff and volunteers to report child sexual abuse to an external authority.⁴⁸⁹ For example, in *Case Study 45: Problematic and harmful sexual behaviours of children in schools*, EAM, the father of a former student at Shalom Christian College, recommended that ‘schools immediately report serious sexual assaults to police’ and that there be consequences if they do not.⁴⁹⁰ Further, a private session attendee told us, ‘what I really would like to come out of this Commission ... [is] [t]hat it is made very clear that [individuals working in] institutions need to report crimes when they are aware of them’.⁴⁹¹ Some representatives of institutions that are not subject to many or any reporting obligations also supported the introduction of an obligatory reporting model that would apply to their institution.⁴⁹² The reporting of known and suspected child sexual abuse to the police and the reporting of conduct to an oversight body were widely supported, as was mandatory reporting to child protection authorities.⁴⁹³

Some private sessions attendees told us that legally obliging institutions and their staff and volunteers to report child sexual abuse to an external authority helped to address barriers to reporting. One private sessions attendee stated that if reporting were legally required, ‘They’re not faced with the dilemma of dobbing their friend in; they’re faced with the easy decision that they have to abide by the law. It’s their professional and ethical obligation to do so’.⁴⁹⁴

We agree that institutions and adults associated with institutions should be legally obliged to report institutional child sexual abuse to an external government authority. Reasons for this include:

- It is often very difficult for the victim to disclose or report child sexual abuse to an external government authority at the time or even reasonably soon after it occurred. If persons other than the victim do not report to an external government authority, the abuse – and the perpetrator – may go undetected for years.
- Children are likely to have fewer opportunities and be less able than adults to report the abuse to an external government authority or to take effective steps to protect themselves, leaving them particularly in need of the active assistance and protection of adults.

In our case studies, private sessions and consultations, we have observed the profound, negative consequences of the under-reporting of child sexual abuse. It is clear to us that a moral duty is often not strong enough to persuade people to report information to external government authorities that could stop or prevent child sexual abuse.

In this volume and in our *Criminal justice* report, we recommend legislative reform that would establish or amend obligatory reporting models so that more individuals and institutions across Australia that work with children are required to report institutional child sexual abuse to an external government authority. Our recommendations include:

- extending mandatory reporter groups, which would require a wider range of professionals to report child sexual abuse to child protection authorities (see our discussion that follows on mandatory reporting and Recommendation 7.1)
- introducing a ‘failure to report’ offence, which would make it an offence for an owner, manager, staff member or volunteer of an institution to fail to report known or suspected institutional child sexual abuse to the police (see *Criminal Justice* report, Chapter 16, ‘Failure to report offences’ and Recommendation 33)⁴⁹⁵
- establishing nationally consistent reportable conduct schemes, which would require heads of designated institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution’s employees (see Chapter 4, ‘Oversight of institutional complaint handling’ and Recommendation 7.9).

This package of legislative reforms aims to improve reporting of institutional child sexual abuse to external government authorities, either by individual responsibility or by a person being an office-bearer in, or otherwise associated with, an institution. In the following section we explain these recommended reforms, as well as our recommendations for strengthening legislative reporter protections.

Mandatory reporting to child protection authorities

Variation in laws concerning mandatory reporting to child protection authorities potentially creates variation in levels of safety and protection for children. There is a need for state and territory governments to work better together to improve consistency in mandatory reporting laws. This section explains why we are recommending legislative reforms to mandatory reporter groups. We also consider how these reforms could take place as part of a reinvigorated broader initiative towards consistency in mandatory reporting laws.

Reporter groups

The definition in legislation of which occupational groups and other groups who work closely with children are considered mandatory reporters is not standardised across jurisdictions. For example, youth justice workers are mandatory reporters in only four jurisdictions.⁴⁹⁶ Research has suggested that when a group of individuals are not mandatory reporters to child protection authorities, they may be likely to make fewer reports than if they were.⁴⁹⁷

The principle that individuals who work closely with children should be obliged to report child sexual abuse to an external government authority is persuasive. For adults who work or volunteer in institutions, reporting risks of harm to children to a child protection authority is a sensible reporting pathway because it is not always clear where abuse is occurring (for example, in the home or in an institution, or both). We have also seen that in some institutional settings, such as the Jehovah's Witnesses, there may be little separation between the institution and the family. If a child needs protection due to institutional child sexual abuse and there is no parent or guardian able or willing to protect them, the child protection authority has a responsibility to do so. In addition, extending mandatory reporter groups should help to address what we have heard about the negative consequences of under-reporting of institutional child sexual abuse, barriers to reporting and inconsistency in mandatory reporter groups.

We recommend that state and territory governments amend laws concerning mandatory reporting to child protection authorities to include the following groups, as a minimum, as mandatory reporters (in addition to the four occupations already designated as mandatory reporters in each jurisdiction):

- out-of-home care workers, excluding foster and kinship/relative carers
- youth justice workers
- early childhood workers
- registered psychologists and school counsellors
- people in religious ministry.

Two of the main benefits of this recommendation would be that more individuals who work closely with children – and who therefore have a moral and professional imperative to report known or suspected child abuse and neglect to an external government authority – would be obliged to report to child protection authorities and also be protected in making a report. This should result in increased reporting of both institutional and familial child abuse and neglect, including child sexual abuse, thereby allowing child protection authorities to prevent or stop children from being abused. Further, many mandated reporter groups receive training and education on their reporting obligations. Expanding the number of groups who receive such training and education should increase awareness and understanding of child abuse and neglect, including child sexual abuse.

We acknowledge that there are complexities associated with extending mandatory reporter groups, such as the need for consultation with relevant stakeholders. We also heard in our *Institutional review of Commonwealth, state and territory governments* case study that the New South Wales and Queensland governments are already concerned about the current high rates of voluntary and mandatory reporting,⁴⁹⁸ and that New South Wales holds additional concerns that potential expansions to mandatory reporter groups may flood child protection authorities with reports.⁴⁹⁹ The risk here is that scarce time and resources may be spent responding to lower level reports that do not meet the threshold for statutory intervention, resulting in reports of child sexual abuse receiving less resourcing and attention.

As the Queensland Law Reform Commission has noted, concerns about over-reporting as a result of expanding mandatory reporter groups ‘relate to issues such as the training and education about what is and is not reportable, the capacity of departments to adequately screen and respond to notifications, and the availability of services’.⁵⁰⁰ We are of the view that many of the potential adverse consequences of expanding mandatory reporter groups could be ameliorated through the appropriate funding and resourcing of child protection authorities,⁵⁰¹ and the training and education of new reporter groups.

Further advantages of including the nominated groups as mandatory reporters are outlined below.

Out-of-home care workers and youth justice workers: In the out-of-home care sector, departmental staff (that is, paid public servants such as caseworkers) are mandatory reporters to child protection authorities in six Australian jurisdictions.⁵⁰² Residential care staff are mandatory reporters in five jurisdictions.⁵⁰³ Caseworkers employed by non-government out-of-home service providers are mandatory reporters in New South Wales, South Australia and the Northern Territory.⁵⁰⁴ They are also mandatory reporters in Tasmania if they work for a government-funded service.⁵⁰⁵ As noted above, youth justice workers are mandatory reporters in four jurisdictions.

Including out-of-home care and youth justice workers as mandatory reporters means that individuals who care for, and provide services to, a particularly vulnerable group of children under the care of the government, or living in government-run and/or government-funded youth detention centres, would be obliged to report suspected or known child sexual abuse to

an external government authority. These individuals are uniquely placed to detect and report child sexual abuse occurring in out-of-home care and youth detention settings due to their professional training and frequent contact with children, which enables them to observe and monitor changes in a child's behaviour.

Further, out-of-home care workers are mandatory reporters in the majority of Australian states and territories. Youth justice workers are also mandatory reporters to child protection authorities in several Australian jurisdictions. Designating these workers as mandatory reporters to child protection authorities in the few jurisdictions in which they are not already mandatory reporters would be unlikely to overburden governments and would promote greater national consistency in reporter groups.

It is not proposed that foster carers and kinship/relative carers be included as mandatory reporters where they are not presently covered by state and territory mandatory reporting laws. In our view, given the range of measures recommended by the Royal Commission, seeking to impose mandatory reporting by home-based carers in a family setting (and exposing them to criminal penalties for failing to report) is unlikely to have practical utility in increasing protection to children from institutional sexual abuse. Our concern is that any such inclusion might introduce a range of unintended consequences without necessarily achieving identifiable benefits.

Early childhood workers: Early childhood workers are mandatory reporters in six jurisdictions.⁵⁰⁶ Children who access early childhood services are particularly vulnerable to risks of harm due to their age. Individuals who care for and provide services to these children should be obliged to report suspected or known child sexual abuse to an external government authority.

In 2016, Queensland passed legislation to include early childhood workers as mandatory reporters.⁵⁰⁷ The reporting duty started 1 July 2017.⁵⁰⁸ The Queensland Law Reform Commission recommended this legislative reform in 2015, after reviewing whether mandatory reporting should be extended to the early childhood education and care sector.⁵⁰⁹

The 'overwhelming majority' of submissions received by the Queensland Law Reform Commission supported extending mandatory reporting to early childhood workers.⁵¹⁰ In their submissions, stakeholders cited several reasons for this, including:⁵¹¹

- the number of children in approved early childhood education and care services
- the quality and frequency of care
- the close relationship that can develop between early childhood education and care workers and the children and families in their care
- the increasing professionalisation of the early childhood education and care workforce
- the particular vulnerability of children aged 0–5 years to abuse
- the capacity for mandatory reporting to overcome barriers to reporting by providing a clear legislative basis for reporting and reporter protections.

The Queensland Law Reform Commission also received advice from Professor Ben Mathews, School of Law, Queensland University of Technology, that, within the state, ‘child care personnel are infrequent reporters of both physical and sexual abuse, with very low numbers of reports per annum’.⁵¹² The Queensland Law Reform Commission’s recommendations were guided by the evidence above and the following considerations:⁵¹³

- the paramountcy principle of protecting children from harm or risk of harm
- the critical protective role of the early childhood education and care sector in relation to children aged 0–5 years, who are particularly vulnerable
- that staff employed in early childhood education and care services are in regular and direct contact with children and their families, and are well placed to observe and report concerns that children are at risk of significant harm, thereby enabling timely intervention to protect children from future harm.

Following this legislative reform in Queensland, early childhood workers are now mandatory reporters to child protection authorities in six Australian jurisdictions. Extending mandatory reporting to early childhood workers in the remaining two jurisdictions would support a nationally consistent approach to obligatory reporting for this sector.

Registered psychologists and school counsellors: Registered psychologists are expressly covered as mandatory reporters to child protection authorities in South Australia, Tasmania and the Australian Capital Territory.⁵¹⁴ School counsellors are expressly covered as mandatory reporters in the Australian Capital Territory legislation.⁵¹⁵ Both groups are mandatory reporters in the Northern Territory, where all citizens are mandatory reporters.⁵¹⁶ Some psychologists and counsellors are mandatory reporters in New South Wales if, in the course of their professional work or paid employment, they deliver certain services to children of the kind defined in section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), such as healthcare.⁵¹⁷

In 2016, the Australian Capital Territory expressly included registered psychologists as mandatory reporters in its child protection legislation.⁵¹⁸ According to evidence given in our *Institutional review of Commonwealth, state and territory governments* case study:

the amendment was consistent with an undertaking to the Australian Capital Territory Children and Young People Commissioner and the Health Services Commissioner in order to further safeguard at-risk children and young people, as well as recognising psychologists alongside of other health professionals.⁵¹⁹

In Victoria, registered psychologists have been identified in the *Children, Youth and Families Act 2005* (Vic) as mandatory reporters, but this provision has not yet commenced operation.⁵²⁰ In our *Institutional review of Commonwealth, state and territory governments* case study, we were told that the Victorian Government does not propose to make psychologists mandatory reporters because:

a look at our data would suggest that we do have significant reporting that already occurs and we have done a lot of work over the last eight or nine years, really, with a lot of professions, including psychologists, about their responsibilities, irrespective of mandated status.⁵²¹

Registered psychologists and school counsellors should be mandatory reporters in every jurisdiction because they provide therapeutic treatment and support to children, and are therefore in a position of advantage to receive disclosures from children and look for indicators of child sexual abuse.

People in religious ministry: The Royal Commission defines a person in religious ministry as including a minister of religion, priest, deacon, pastor, rabbi, Salvation Army officer, church elder, religious brother or sister and any other person recognised as a spiritual leader in a religious institution.

South Australia expressly includes as mandatory reporters a minister of religion and ‘a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes’.⁵²² However, a minister of religion is not required ‘to divulge information communicated in the course of a confession made in accordance with the rules and usages of the relevant religion’.⁵²³ Every person in the Northern Territory is a mandatory reporter.⁵²⁴ In other jurisdictions, people in religious ministry may be mandatory reporters if they fall under an existing mandatory reporter group. For example, in the Australian Capital Territory, people in religious ministry are mandatory reporters if they are also a school counsellor,⁵²⁵ but are otherwise not mandatory reporters in relation to their pastoral work.⁵²⁶

People in religious ministry interact with children in the course of their work. For example, people in religious ministry may engage with children through:

- religious instruction or pastoral care for children
- community group activities run by places of worship
- religious confession
- the National School Chaplaincy Program, where chaplains provide pastoral care services to students in over 3,000 schools across Australia.

The many ways that people in religious ministry engage with children, sometimes on a daily basis, enable them to detect and receive disclosures of both familial and institutional child sexual abuse. Extending laws concerning mandatory reporting to child protection authorities to people in religious ministry could therefore play a powerful role in preventing or intervening at an early stage in child sexual abuse cases. Further, reporting to a child protection authority may be the most appropriate reporting pathway in the first instance for religious institutions where there is little separation between the church and the family. For example, in the *Jehovah's Witnesses* case study and in private sessions, we heard of cases where the perpetrator or alleged perpetrator was a member of the victim's family, but the disclosures of this child sexual abuse were made to elders in the Jehovah's Witnesses.⁵²⁷

As discussed in Section 2.4.2, 'Barriers to reporting', many of the religious institutions we examined in our case studies had institutional cultures that discouraged reporting of child sexual abuse.⁵²⁸ Obliging people in religious ministry to report child sexual abuse to child protection authorities may help overcome cultural, scriptural, hierarchical and other barriers to reporting.

Many private sessions attendees expressed support for extending mandatory reporting obligations to people in religious ministry.⁵²⁹

Some case study witnesses representing religious institutions also expressed support for extending mandatory reporting obligations to people in religious ministry.

During *Case Study 50: Institutional review of Catholic Church authorities*, Catholic archbishops Prowse, Costelloe, Wilson, Fisher, Hart and Coleridge all agreed that the clergy in their archdioceses should be included as mandatory reporters, subject to an exception for information obtained in the course of religious confession (discussed further below).⁵³⁰

In *Case Study 52: Institutional review of Anglican Church institutions*, witnesses for the Anglican Church also expressed support for mandatory reporting obligations. Archbishop Philip Freier,⁵³¹ Bishop Dr Sarah Macneil,⁵³² Archbishop Glenn Davies⁵³³ and Bishop Geoffrey Smith⁵³⁴ all stated that they had no opposition to being mandatory reporters. Mr Garth Owen Blake, Chair of the Professional Standards Commission of the General Synod, supported 'a consistent approach to mandatory reporting, such that ministers of religion are required to mandatorily report'.⁵³⁵

In a response provided to the Royal Commission, the Rabbinical Council of Victoria stated that it 'supports obligating mandatory reporting of cases of suspected child sexual abuse on rabbis and other religious leaders, employees and volunteers in organisations formed for religious or spiritual purposes'.⁵³⁶

We have considered whether people in religious ministry should be exempted from mandatory reporting to child protection authorities where they know or suspect that a child is at risk of harm on the basis of information disclosed in or in connection with a religious confession. We have considered the treatment of religious confession in detail in our *Criminal justice* report,

which recommends against an exemption from ‘failure to report’ offences for information communicated during or in connection with a religious confession. Our detailed consideration of this issue is set out in Chapter 16 of that report.⁵³⁷

Similarly, we believe that for people in religious ministry, the obligation to report to child protection authorities should apply in relation to knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.

We understand the significance of religious confession, in particular the inviolability of the confessional seal to people of some faiths, particularly the Catholic faith. Our Terms of Reference require us to consider ‘what institutions and governments should do to better protect children against child sexual abuse’ and ‘what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse’.⁵³⁸

In our case studies, we heard that religious confession has been used as a forum to disclose child sexual abuse, both by children subject to abuse and by perpetrators of abuse.⁵³⁹ For example, in *Case Study 11: Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent’s Orphanage Clontarf, St Mary’s Agricultural School Tardun and Bindoon Farm School*, VG, a survivor, gave evidence that as a child he told two priests in confession of being sexually abused by a religious brother.⁵⁴⁰ He gave evidence that one of the priests subsequently told the abuser about his confession.⁵⁴¹

We acknowledge the view that a civil law duty on people in religious ministry to report information they learn in religious confessions, even of child sexual offending, would constitute an intrusion into the religious practice of confession and that complying with such an obligation would raise serious issues of conscience for Catholic clergy.

In a civil society, it is important that the right of a person to freely practise their religion in accordance with their beliefs is upheld. However, that right is not absolute. This is recognised in Article 18 of the United Nations International Covenant on Civil and Political Rights regarding freedom of religion, which provides that the freedom to manifest one’s religion or beliefs may be limited by law, where necessary to protect public safety, order, health or morals, or to ensure the fundamental rights and freedoms of others.⁵⁴²

Although it is important that civil society recognise the right of a person to practise a religion in accordance with their own beliefs, that right cannot prevail over the safety of children. The right to practise one’s religious beliefs must accommodate civil society’s obligation to provide for the safety of all individuals. Institutions directed to caring for and providing services for children, including religious institutions, must provide an environment where children are safe from sexual abuse.

Mandatory reporting to child protection authorities aims to ensure that adults who exercise the closest care and supervision of children understand and carry out their obligation to report knowledge or suspicion of risks of harm to children. The consequence of exempting people in religious ministry from reporting information they learn about risks of harm to children in religious confessions is that civil authorities may not receive information that will provide them with the opportunity to prevent and stop the abuse of children.

Consequently, we do not consider that any exemption, excuse, protection or privilege from reporting information learned in religious confession should be granted to people in religious ministry who are mandatory reporters.

Further discussion on obligatory reporting and religious institutions is contained in Volume 16, *Religious institutions*.

Recommendation 7.3

State and territory governments should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, state and territory governments should also include the following groups of individuals as mandatory reporters in every jurisdiction:

- a. out-of-home care workers (excluding foster and kinship/relative carers)
- b. youth justice workers
- c. early childhood workers
- d. registered psychologists and school counsellors
- e. people in religious ministry.

Recommendation 7.4

Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.

Consistency across jurisdictions

Extensions to mandatory reporter groups should be part of a reinvigorated broader initiative towards consistency in laws concerning mandatory reporting to child protection authorities.

We heard from stakeholders who supported consistent laws concerning mandatory reporting to child protection authorities across jurisdictions.⁵⁴³ In our *Out-of-home care* case study, non-government service providers of out-of-home care were asked their views on the merits of a nationally consistent approach to mandatory reporting laws. They were generally supportive of this approach,⁵⁴⁴ perceiving the benefits to include:⁵⁴⁵

- nationally consistent definitions
- comparable and standardised data
- equity in outcomes for children in different jurisdictions.

Christian Schools Australia told us that a nationally consistent mandatory reporting framework is needed. It said that teachers, especially non-government school staff, are mobile between jurisdictions, and inconsistencies create uncertainty and confusion around requirements and responsibilities.⁵⁴⁶ The Truth, Justice and Healing Council, on behalf of the Catholic Church, submitted that harmonised mandatory reporting laws ‘would significantly enhance the ability of schools and school systems to give effect to these requirements at a practical level’.⁵⁴⁷

Support for consistent mandatory reporting laws across jurisdictions was also expressed by witnesses representing religious institutions in our institutional review case studies.⁵⁴⁸ For example, in *Case Study 55: Institutional review of Australian Christian Churches and affiliated Pentecostal churches*, Pastor Wayne Alcorn, National President of the Australian Christian Churches, stated that his institution supports uniformity in mandatory reporting laws:

We are a national organisation and pastors move between states, and the more things that are uniform across our nation the easier it is to keep things streamlined and for us to administer processes and schemes.⁵⁴⁹

We also considered submissions made to the 2015 Queensland Law Reform Commission review of mandatory reporting laws for the early childhood sector, many of which expressed support for greater national consistency in these laws. One submission noted that:

national consistency in law is generally desirable both to reduce the compliance burden on organisations working across jurisdictions as well as to reduce confusion for families and workers who move interstate.⁵⁵⁰

While many state and territory government inquiries have examined their jurisdictions' mandatory reporting laws, few have made recommendations about national consistency. An exception is the 2012 Protecting Victoria's Vulnerable Children Inquiry. This inquiry recommended that the Victorian Government work with all relevant jurisdictions to evaluate mandatory reporting schemes, with a view to identifying opportunities to harmonise the various statutory models.⁵⁵¹

Following the inquiry's recommendation, all state and territory governments agreed that research on the effectiveness of mandatory reporting legislation was a priority. A research project was undertaken by a team of academics, with funding from the Australian Government. The project's final report, *Child abuse and neglect: A socio-legal study of mandatory reporting in Australia (Child abuse and neglect)*, was released in March 2016. The report comprised nine volumes, one for each state and territory government and one for the Australian Government.

The *Child abuse and neglect* study is a useful starting point for state and territory governments to discuss opportunities for greater national consistency in mandatory reporting laws. State and territory governments can learn from each other and from mandatory reporters about the challenges posed by mandatory reporting that are common to each jurisdiction. This should inform discussion between jurisdictions about solutions to problems with mandatory reporting laws, including through changes to legislation, policy and procedure.

'Failure to report' offences

In our *Criminal justice* report, we considered whether a 'failure to report' offence should apply to institutional child sexual abuse and whether institutions, or officers of institutions, should be subject to reporting obligations backed by Crimes Act or Criminal Code offences.

We consider that there are good reasons for the criminal law to impose obligations on third parties to report child sexual abuse to the police in addition to those discussed in relation to obligatory reporting above. For example:

- Those who commit child sexual abuse offences may have multiple victims and may offend against particular victims over lengthy periods of time – perhaps more so than with other serious criminal offences. A failure to report child sexual abuse or to protect the child may leave that particular child exposed to repeated sexual abuse over time and may expose other children to sexual abuse. The impact of child sexual abuse on individual victims may be lifelong, and the impact on their families and the broader community may continue into subsequent generations.
- The most effective deterrent through criminal law may be the risk of detection. Promoting the earliest possible reporting should increase the likelihood of detection, regardless of whether a successful prosecution follows. If would-be perpetrators perceive that there is a real risk of being caught, they may be deterred from offending.

The purpose of a ‘failure to report’ offence differs from that of laws concerning mandatory reporting to child protection authorities and reportable conduct schemes in that it focuses on catching, prosecuting and convicting offenders. Further, without a ‘failure to report’ offence that applies to a broad range of institutions, gaps would remain in reporting obligations that apply to institutions and their staff. We consider that a ‘failure to report’ offence is needed in addition to obligations to report externally under laws concerning mandatory reporting to child protection authorities and reportable conduct schemes.

We recommend that each state and territory government introduce legislation to create a ‘failure to report’ offence targeted at child sexual abuse in an institutional context.

We consider that the offence should apply not only where a person in the institution knows or suspects that a child is being or has been sexually abused by an adult associated with the institution but also where the person *should have* suspected abuse.

The standard of ‘should have suspected’ requires a person to report in any instance where a reasonable person in the same circumstances as the person would have suspected child sexual abuse. It allows for consideration of what the person knew and asks whether, with that knowledge and in those circumstances, a reasonable person would have suspected child sexual abuse was occurring. In line with the standard of criminal negligence, the offence would be committed on the basis that the person should have suspected only where the person greatly falls short of what would be expected of a reasonable person.

We discuss the ‘failure to report’ offence in more detail in our *Criminal justice* report.⁵⁵² Recommendation 33 of our *Criminal justice* report states:⁵⁵³

Each state and territory government should introduce legislation to create a criminal offence of failure to report targeted at child sexual abuse in an institutional context as follows:

- a. The ‘failure to report’ offence should apply to any adult person who:
 - i. is an owner, manager, staff member or volunteer of a relevant institution – this includes persons in religious ministry and other officers or personnel of religious institutions
 - ii. otherwise requires a Working With Children Check clearance for the purposes of their role in the institutionbut it should not apply to individual foster carers or kinship carers.
- b. The ‘failure to report’ offence should apply if the person fails to report to police in circumstances where they know, suspect, or should have suspected (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect), that an adult associated with the institution was sexually abusing or had sexually abused a child.

- c. Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster and kinship care services should be included (but not individual foster carers or kinship carers). Facilities and services provided by religious organisations, and any services or functions performed by persons in religious ministry, should be included.
- d. If the knowledge is gained or the suspicion is or should have been formed after the 'failure to report' offence commences, the 'failure to report' offence should apply if any of the following circumstances apply:
 - i. A child to whom the knowledge relates or in relation to whom the suspicion is or should have been formed is still a child (that is, under the age of 18 years).
 - ii. The person who is known to have abused a child or is or should have been suspected of abusing a child is either:
 - still associated with the institution
 - known or believed to be associated with another relevant institution.
 - iii. The knowledge gained or the suspicion that is or should have been formed relates to abuse that may have occurred within the previous 10 years.
- e. If the knowledge is gained or the suspicion is or should have been formed before the 'failure to report' offence commences, the 'failure to report' offence should apply if any of the following circumstances apply:
 - i. A child to whom the knowledge relates or in relation to whom the suspicion is or should have been formed is still a child (that is, under the age of 18 years) and is still associated with the institution (that is, they are still in the care, supervision or control of the institution).
 - ii. The person who is known to have abused a child or is or should have been suspected of abusing a child is either:
 - still associated with the institution
 - known or believed to be associated with another relevant institution.

Reportable conduct schemes

In Chapter 4, 'Oversight of institutional complaint handling' we examine the need for independent oversight of institutional complaint handling, which includes oversight of institutions' external reporting of child sexual abuse. We consider how reportable conduct schemes provide such oversight.

Obligatory reporting by the head of an institution to an oversight body is a key element of reportable conduct schemes. Through this mechanism, such schemes encourage reporting of institutional child sexual abuse to an external government authority in a timely and consistent manner. They also encourage reporting of child sexual abuse and of any mishandling of such allegations, by providing employees with a direct reporting pathway to an oversight body, which does not require them to advise the head of their employing institution about their concerns.

In Chapter 4 we recommend that state and territory governments establish nationally consistent reportable conduct schemes which would oblige heads of designated institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

Strengthening reporter protections

As discussed in Section 2.4.4, there are gaps in the legislative protections currently available to reporters. Strengthening legislative protections for those making complaints or reports is important to ensure that child sexual abuse in institutional contexts is identified and responded to adequately.

While improving institutional cultures may be the best way to both encourage reporting of child sexual abuse and prevent detrimental action being taken against reporters, legislative protection for reporters would send an important signal and contribute to such desirable cultural change. Those who have made a report in good faith should be reassured that the law will protect them. Further, where individuals are legally obliged to report – for example, under laws concerning mandatory reporting to child protection authorities – it is only appropriate that they be protected from adverse consequences.

Governments should address gaps in the existing legislative protection for individuals who make reports about child sexual abuse, including in relation to mandatory and voluntary reports to child protection authorities under child protection legislation, and notifications concerning child abuse under the Health Practitioner Regulation National Law.

Gaps in protection for individuals making internal complaints are of particular relevance to child sexual abuse in institutional contexts. It is important that individuals are protected when making complaints of child sexual abuse. It is also important that, where institutions respond inadequately or improperly to incidents or allegations of child sexual abuse, these problems are reported by those in an institution who become aware of them. Individuals making such complaints or reports should be protected from civil and criminal liability and from reprisals or other detrimental action.

Legislative schemes generally apply protections only to reporters making reports to external authorities. Provisions protecting individuals making internal complaints about child sexual abuse are unusual. However, there are some examples of such protections, which could be built on. For example, as discussed in Section 2.4.4, under the model for school staff members to report child abuse under Queensland's legislation, the principal of the school is informed of the

conduct, and can take appropriate action internally. At the same time the principal is required to inform an external agency, ensuring appropriate oversight.⁵⁵⁴ Both the staff member and the principal are provided with protection from liability in respect of their reporting.⁵⁵⁵

The New South Wales child protection legislation protects individuals making reports to any ‘person who has the power or responsibility to protect the child or young person’.⁵⁵⁶ This focuses on the function or role of the person to whom the report is made, and provides some protection for individuals making internal complaints, as well as external reports.

In our view, building on child protection legislation is the simplest and most direct means to extend protection to individuals making internal complaints relating to child sexual abuse. We recommend that child protection legislation provide comprehensive protection for individuals who make a complaint to an institution that engages in child-related work about child sexual abuse in that institution, or the response of that institution to child sexual abuse.

Another possible way forward is through reform of public interest disclosure legislation (or ‘whistleblower’ legislation). At present, the focus of such legislation remains on the conduct of public officials and government agencies, and does not extend to conduct in the private or not-for-profit sectors. In most jurisdictions, only public officials may make a complaint or report and be protected under public interest disclosure legislation.⁵⁵⁷

We see no persuasive reason to limit the whistleblower protection to reporters in the public sector. Arguably, any person making a disclosure that fulfils the statutory criteria for a public interest disclosure should be given protection.

In future, whistleblower protection may extend more broadly to conduct outside the public sector. For example, the *Fair Work (Registered Organisations) Act 2009* (Cth) contains whistleblower protections,⁵⁵⁸ and there have been suggestions that those provisions may form a model for private sector whistleblower law reform.⁵⁵⁹

On 30 November 2016, the Australian Senate referred an inquiry into whistleblower protection in the corporate, public and not-for-profit sectors to the Parliamentary Joint Committee on Corporations and Financial Services which is currently underway. The Terms of Reference for this inquiry include inquiring and reporting into the ‘most effective ways of integrating whistleblower protection requirements for the corporate, public and not-for-profit sectors into Commonwealth law’.⁵⁶⁰

Many submissions to our consultation papers and issues papers suggested that protection for whistleblowers should be strengthened.⁵⁶¹ For example, People with Disability Australia stated:

Whistleblowers may be of particular importance for children and adults with disability, especially given that, as currently, few of this cohort are adequately supported through police responses, reports, investigations and so on. Protections for whistleblowers are particularly important in the case of institutional child sexual abuse.⁵⁶²

The Law Council of Australia noted that, in Victoria, the *Protected Disclosure Act 2012* (Vic) includes protection from reprisals, and submitted that similar protection should be available in other states and territories.⁵⁶³ Legal advice service knowmore also supported legislation protecting whistleblowers from ‘detrimental action, such as dismissal from their employment or other reprisals, including harassment’.⁵⁶⁴ The organisation submitted that:

robust legislative protections for whistleblowers are important in encouraging staff at institutions to report institutional child sexual abuse occurring, and to co-operate in its investigation. There should be a criminal offence based on reprisal action, supported by a capacity to seek injunctive relief and compensation to prevent and/or help to redress adverse consequences arising in relation to a whistleblower’s employment. There are a number of ‘models’ in other legislation.⁵⁶⁵

The Australian Government and state and territory governments should take account of the need to protect individuals who make complaints or reports about child sexual abuse in institutional contexts in considering whether public interest disclosure legislation should be extended to cover the private and not-for-profit sectors.

Recommendation 7.5

The Australian Government and state and territory governments should ensure that legislation provides comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts. Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report, including in relation to:

- a. mandatory and voluntary reports to child protection authorities under child protection legislation
- b. notifications concerning child abuse under the Health Practitioner Regulation National Law.

Recommendation 7.6

State and territory governments should amend child protection legislation to provide adequate protection for individuals who make complaints or reports in good faith to any institution engaging in child-related work about:

- a. child sexual abuse within that institution or
- b. the response of that institution to child sexual abuse.

Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report.

2.5.3 Supporting implementation

Aligning multiple external reporting requirements

We do not intend for our reporting recommendations to create unnecessary multiple reports to external government authorities.

New South Wales stakeholders, particularly those in the out-of-home care and education sectors, told us about the challenges of complying with multiple obligatory reporting models and the potential for duplicated obligations.⁵⁶⁶ The Association of Children's Welfare Agencies stated that reporting obligations in out-of-home care are 'a complex system for workers to navigate, particularly as they will be using multiple oversight mechanisms to report the incident while concurrently responding to the child's needs'.⁵⁶⁷ In relation to the education sector, the Truth, Justice and Healing Council submitted that 'current multiple reporting obligations are quite complex and require a substantial level of understanding by those responsible for managing a school's mandatory reporting obligations'.⁵⁶⁸

Obligatory reporting models should complement, rather than replicate, each other. Government and regulatory and oversight bodies should minimise duplication and complexity. This could be achieved by working together to clarify:

- the purpose and intended outcomes of obligatory reporting models
- how obligatory reporting models interact
- the role and responsibilities of the government bodies that receive the obligatory reports
- the role and responsibilities of institutions and their staff and volunteers under these obligatory reporting models.

If oversight bodies share information and work collaboratively, the burden on institutions of multiple reporting requirements would be reduced.

Obligatory reporting models must operate in a way that ensures suspicions of child sexual abuse covered by our recommended 'failure to report' offence come to the attention of the police.

Victoria has sought to align its obligatory reporting requirements in a way that reduces the burden on institutions, but also ensures that reports of known or suspected child sexual abuse come to the attention of police. Under the Victorian offence of failure to disclose a child sexual offence, it is a reasonable excuse not to report to police where a person believes on reasonable grounds that the information has already been disclosed to police by another person.⁵⁶⁹

According to the Victorian Department of Justice and Regulation, an example of this exception is where a mandatory reporter has already made a risk of harm report to the Victorian Department of Health and Human Services.⁵⁷⁰ The Department of Health and Human Services passes on all allegations of child sexual abuse it receives under the mandatory reporting system to the police,⁵⁷¹ which reduces duplication and makes the process simpler.

If states or territories are satisfied that all relevant reports made to child protection authorities or oversight bodies will be brought to the attention of police, then it may be appropriate to provide a ‘reasonable excuse’ defence to our recommended ‘failure to report’ offence if a report is made to one of those bodies. Our *Criminal justice* report makes the following recommendation to reduce the potential for duplication in obligatory reporting and ensure that reports of institutional child sexual abuse are brought to the attention of police. Recommendation 34 of our *Criminal justice* report states:⁵⁷²

State and territory governments should:

- a. ensure that they have systems in place in relation to their mandatory reporting scheme and any reportable conduct scheme to ensure that any reports made under those schemes that may involve child sexual abuse offences are brought to the attention of police
- b. include appropriate defences in the ‘failure to report’ offence to avoid duplication of reporting under mandatory reporting and any reportable conduct schemes.

Training on new reporting obligations

As state and territory governments introduce new obligatory reporting models, such as the reportable conduct schemes recently introduced in Victoria and the Australian Capital Territory, governments should provide training and education on them, including how they interact with or relate to any other reporting obligations. The Uniting Church in Australia told us that teachers in Victoria would benefit from further clarification about the relationship between that state’s ‘failure to report’ offence and laws concerning mandatory reporting to child protection authorities.⁵⁷³

Information on new reporting obligations developed by the relevant government departments in each jurisdiction needs to be cohesive, straightforward and tailored for use by different sectors. This could be done, for example, by including scenarios of how the obligations would apply in different sectors, such as in the healthcare or schools sectors.

Endnotes

- 1 Noting that in the Northern Territory, all persons are obliged to report child sexual abuse: *Care and Protection of Children Act 2007* (NT) s 26.
- 2 See for example, *Children and Young People Act 2008* (ACT) s 354; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 24; *Child Protection Act 1999* (Qld) s 13A; *Children, Youth and Families Act 2005* (Vic) s 28. See also *Children's Protection Act 1993* (SA) s 12.
- 3 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 24, under which a person 'may' make a report if he or she has reasonable grounds to suspect that a child or young person is at risk of significant harm.
- 4 *Children and Young People Act 2008* (ACT) s 354, under which a person 'may' report a belief or suspicion that a child is being abused, is being neglected, or is at risk of abuse or neglect.
- 5 *Children, Youth and Families Act 2005* (Vic) s 28, under which a person may make a report if the person has a significant concern for the wellbeing of a child.
- 6 *Children and Young People Act 2008* (ACT) s 874; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 29; *Child Protection Act 1999* (Qld) ss 13D, 197A; *Children's Protection Act 1993* (SA) s 12; *Children, Young Persons and their Families Act 1997* (Tas) s 101A; *Children, Youth and Families Act 2005* (Vic) s 40; *Children and Community Services Act 2004* (WA) s 129.
- 7 For example, in New South Wales, a complaint of institutional child sexual abuse made against a counsellor or psychotherapist who is a member of the Counsellors and Psychotherapists Association of New South Wales (the Association) may be reported to the Association's Ethics Committee, subject to a number of conditions. If the Association upholds the complaint, it may impose certain sanctions on the member, suspend their membership or terminate their membership. The Counsellors and Psychotherapists Association of NSW, *Professional Conduct Procedure*, Sydney, 2006, pp 10, 16.
- 8 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 28.
- 9 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27.
- 10 *Crimes Act 1900* (NSW) s 316(1).
- 11 *Ombudsman Act 1974* (NSW) Pt 3A.
- 12 *Children, Youth and Families Act 2005* (Vic) ss 182, 184.
- 13 *Crimes Act 1958* (Vic) s 327(2).
- 14 *Child Wellbeing and Safety Act 2005* (Vic) Pt 5A.
- 15 *Child Protection Act 1999* (Qld) ss 13E, 13F.
- 16 *Children and Community Services Act 2014* (WA) s 124B.
- 17 *Children's Protection Act 1993* (SA) s 11.
- 18 *Children, Young Persons and their Families Act 1997* (Tas) s 14.
- 19 *Children and Young People Act 2008* (ACT) s 356.
- 20 *Ombudsman Act 1989* (ACT) div 2.2A.
- 21 *Care and Protection of Children Act 2007* (NT) s 26.
- 22 The Commonwealth also imposes a mandatory reporting duty on Family Court personnel in all states and territories to report child abuse to the child protection authority in their jurisdiction: See *Family Law Act 1975* (Cth) s 67ZA; *Children and Young People Act 2008* (ACT) s 356; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27; *Care and Protection of Children Act 2007* (NT) s 26; *Child Protection Act 1999* (Qld) ss 13E, 13F; *Children's Protection Act 1993* (SA) s 11; *Children, Young Persons and Their Families Act 1997* (Tas) s 14; *Children, Youth and Families Act 2005* (Vic) ss 182, 184; *Children and Community Services Act 2004* (WA) s 124A–124C.
- 23 In every state and territory, mandatory reports can be made to the relevant child protection authority. We therefore use the term 'mandatory reporting to child protection authorities' in this chapter. We note, however, that in some jurisdictions, mandatory reports can be made to other agencies. For example, in Tasmania, a mandatory report can be made to a community-based intake service. *Children, Young Persons and Their Families Act 1997* (Tas) s 14.
- 24 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 39. See also: Department of Child Protection (WA), *After a report is made*, 2008, www.mandatoryreporting.dcp.wa.gov.au/Pages/FAQ-Afterareportismade.aspx (viewed 22 June 2017); Family and Community Services (NSW), *Reporting suspected abuse or neglect*, 2017, www.community.nsw.gov.au/preventing-child-abuse-and-neglect/reporting-suspected-abuse-or-neglect (viewed 22 June 2017); Department of Human Services (Vic), *Child Protection*, 2016, www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection (viewed 22 June 2017).
- 25 As reported in B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 46; R Layton, *Our best investment: A state plan to protect and advance the interests of children*, Department of Human Services South Australia, Adelaide, 2003, pp 2–28; Protection Systems Royal Commission, *The life they deserve: Child Protection Systems Royal Commission Report, Volume 1: Summary and Report*, Government of South Australia, Adelaide, 2016, p xxxiii; P Cummins, D Scott & B Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, vol 2, Melbourne, 2012, p 348.
- 26 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 46.
- 27 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 49.

- 28 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 49.
- 29 B Mathews, L Bromfield, K Walsh & G Vimpani, *Child abuse and neglect: A socio-legal study of mandatory reporting in Australia – Report for Australian Government Department of Social Services*, Queensland University of Technology, Brisbane, 2015, p 6.
- 30 B Mathews, 'Mandatory reporting laws and identification of child abuse and neglect: Consideration of differential maltreatment types, and a cross-jurisdictional analysis of child sexual abuse reports', *Social Sciences*, vol 3, no 3, 2014, pp 460–482, 473–4.
- 31 B Mathews, L Bromfield, K Walsh & G Vimpani, *Child abuse and neglect: A socio-legal study of mandatory reporting in Australia – Report for Australian Government Department of Social Services*, Queensland University of Technology, Brisbane, 2015, p 6.
- 32 B Mathews, X Ju Lee & RE Norman, 'Impact of a new mandatory reporting law on reporting and identification of child sexual abuse: A seven year time trend analysis', *Child Abuse & Neglect*, vol 56, 2016, pp 62–79.
- 33 Transcript of M Coutts-Trotter, Case Study 51, 8 March 2017 at 26398:42–26399:7; Transcript of M Hogan, Case Study 51, 8 March 2017 at 26414:47–26415:17; G Moore, 'SA Premier wants changes to abuse reports', *The Australian*, 1 September 2015.
- 34 B Mathews, L Bromfield, K Walsh & G Vimpani, *Child abuse and neglect: A socio-legal study of mandatory reporting in Australia – Report for Australian Government Department of Social Services*, Queensland University of Technology, Brisbane, 2015, pp 13, 18, 23, 28, 33, 38, 43, 48.
- 35 B Mathews, L Bromfield, K Walsh & G Vimpani, *Child abuse and neglect: A socio-legal study of mandatory reporting in Australia – Report for Australian Government Department of Social Services*, Queensland University of Technology, Brisbane, 2015, pp 13, 18, 23, 28, 33, 38, 43, 48.
- 36 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014.
- 37 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 3.
- 38 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 3.
- 39 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 3.
- 40 *Children and Young People Act 2008* (ACT) s 356; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27; *Care and Protection of Children Act 2007* (NT) s 26; *Child Protection Act 1999* (Qld) s 13E; *Children's Protection Act 1993* (SA) s 11; *Children, Young Persons and their Families Act 1997* (Tas) s 14; *Children, Youth and Families Act 2005* (Vic) ss 182, 184; *Children and Community Services Act 2014* (WA) s 124B.
- 41 *Children and Community Services Act 2014* (WA) s 124B.
- 42 *Children's Protection Act 1993* (SA) s 11(2)(ga).
- 43 *Care and Protection of Children Act 2007* (NT) s 26.
- 44 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27(1).
- 45 *Children, Youth and Families Act 2005* (Vic) s 182.
- 46 *Child Protection Act 1999* (Qld) ss 13E(1)(a)–(f).
- 47 *Child Protection Act 1999* (Qld) s 13E(1)(e).
- 48 *Child Protection Act 1999* (Qld) ss 13F(1)(a)–(c).
- 49 *Children and Community Services Act 2004* (WA) s 124B(1)(a).
- 50 *Children's Protection Act 1993* (SA) s 11(2).
- 51 *Children, Young Persons and Their Families Act 1997* (Tas) s 14(1).
- 52 *Children and Young People Act 2008* (ACT) s 356(2).
- 53 *Care and Protection of Children Act 2007* (NT) s 26(1).
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- 339 Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, pp 48–9; Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Little children are sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Government of the Northern Territory, Darwin, 2007, p 77.
- 340 Royal Commission into Institutional Responses to Child Sexual Abuse, Schools private roundtable, Sydney, 2015.
- 341 Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper No 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, p 47.
- 342 Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Little children are sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Government of the Northern Territory, Darwin, 2007, p 78.
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354 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 2: YMCA NSW's response to the conduct of Jonathan Lord*, Sydney, 2014, pp 6, 7, 25, 36; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 27: The response of health care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse*, Sydney, 2015, pp 8–9; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 22: The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions*, Sydney, 2016, p 71.

355 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, Sydney, 2016, p 71.

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362 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009*, Sydney, 2014, p 47; Royal Commission into Institutional Responses to Child Sexual Abuse, Schools private roundtable, Sydney, 2015.

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371 Royal Commission into Institutional Responses to Child Sexual Abuse, Schools private roundtable, Sydney, 2015.

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375 Department of Premier and Cabinet, 'Child wellbeing units', *Keep them safe: A shared approach to child wellbeing*, Keep them safe factsheet no 4a, NSW Government, Sydney, 2013, www.dpc.nsw.gov.au/__data/assets/pdf_file/0008/84878/04a_KTS_FACT_SHEET_-_CHILD_WELLBEING_UNITS.pdf (viewed 1 August 2017).

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380 Transcript of M Coutts-Trotter, Case Study 51, 8 March 2017 at 26414:2–14.

381 Transcript of M Coutts-Trotter, Case Study 51, 8 March 2017 at 26414:7–14.

382 Transcript of M Coutts-Trotter, Case Study 51, 8 March 2017 at 26411:25–45; Transcript of M Hogan, Case Study 51,
8 March 2017 at 26411:26–32.

383 Transcript of M Hogan, Case Study 51, 8 March 2017 at 26411:25–32.

384 Transcript of M Coutts-Trotter, Case Study 51, 8 March 2017 at 26411:41–5.

385 Child Sexual Abuse Prevention Program, Submission to the Royal Commission into Institutional Responses to Child
Sexual Abuse, *Issues paper 9: Addressing the risk of child sexual abuse in primary and secondary schools*, 2015, p 3.

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protection-laws-explained/mandatory-reporting](http://www.playbytherules.net.au/got-an-issue/child-protection/child-protection-laws-explained/mandatory-reporting) (viewed 21 July 2017).

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Reporting_child_abuse_VIC.pdf](http://www.play-by-the-rules.s3.amazonaws.com/Resources/R088_Reporting_child_abuse_VIC.pdf) (viewed 21 July 2017).

393 Play by the Rules, *Reporting child abuse – New South Wales*, 2017, [www.play-by-the-rules.s3.amazonaws.com/
Resources/R094_Reporting_child_abuse_NSW.pdf](http://www.play-by-the-rules.s3.amazonaws.com/Resources/R094_Reporting_child_abuse_NSW.pdf) (viewed 21 July 2017).

394 See, for example, *Public Interest Disclosures Act 1994* (NSW) ss 14, 10, 11; *Protected Disclosure Act 2012* (Vic) s 13.

395 knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Criminal justice*, 2016, p 23.

396 Royal Commission into Institutional Responses to Child Sexual Abuse, Schools private roundtable, Sydney, 2015.

397 There are some other protections for reporters, including under industrial relations, work health and safety, corporations and anti-discrimination legislation. However, these are of limited application to child sexual abuse and are not discussed further. See, for example, *Corporations Act 2001* (Cth) Part 9.4AAA, s 1317AA (protection for whistleblowers); *Sex Discrimination Act 1984* (Cth) s 94(1) (victimisation); *Work Health and Safety Act 2011* (NSW) ss 104, 105 (discriminatory conduct against a worker raising concerns of work health and safety); *Fair Work Act 1994* (SA) ss 115(i), 116B (disadvantaging an employee for a ‘prohibited reason’).

398 *Children and Young People Act 2008* (ACT) s 356; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27(2); *Care and Protection of Children Act 2007* (NT) ss 13, 26(1); *Child Protection Act 1999* (Qld) ss 13E(3), 13F(3); *Children’s Protection Act 1993* (SA) s 11(1); *Children, Young Persons and their Families Act 1997* (Tas) s 14(2); *Children, Youth and Families Act 2005* (Vic) ss 28, 31, 181, 183; *Children and Community Services Act 2004* (WA) ss 124A, 124B(1).

399 *Children and Young People Act 2008* (ACT) ss 354, Note 1, 874; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 29; *Child Protection Act 1999* (Qld) ss 13D, 197A; *Children’s Protection Act 1993* (SA) s 12; *Children, Young Persons and their Families Act 1997* (Tas) s 101A; *Children, Youth and Families Act 2005* (Vic) s 40; *Children and Community Services Act 2004* (WA) s 129; *Care and Protection of Children Act 2007* (NT) s 26.

400 *Children and Young People Act 2008* (ACT) s 874; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 29; *Child Protection Act 1999* (Qld) ss 13D, 197A(2); *Children, Youth and Families Act 2005* (Vic) ss 189–91; *Children and Community Services Act 2004* (WA) s 129. See also *Children’s Protection Act 1993* (SA) s 12; *Children, Young Persons and their Families Act 1997* (Tas) s 101A(1)(b).

401 *Children’s Protection Act 1993* (SA) s 11(6).

402 *Children’s Protection Act 1993* (SA) s 11(6).

403 *Ombudsman Act 1974* (NSW) ss 25H, 37(5). See also *Ombudsman Act 1989* (ACT).

404 All states and territories have enacted legislation applying the National Law as set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld); *Health Practitioner Regulation National Law* (ACT) Act 2010 (ACT) s 6; *Health Practitioner Regulation (Adoption of National Law) Act 2009* (NSW) s 4; *Health Practitioner Regulation (National Uniform Legislation) Act 2010* (NT) s 4; *Health Practitioner Regulation National Law Act 2009* (Qld) s 4; *Health Practitioner Regulation National Law (South Australia) Act 2010* (SA) s 4; *Health Practitioner Regulation National Law (Tasmania) Act 2010* (Tas) s 4; *Health Practitioner Regulation National Law* (Victoria) Act 2009 (Vic) s 4; *Health Practitioner Regulation National Law* (WA) Act 2010 (WA) s 4.

405 *Health Practitioner Regulation National Law 2009* (Qld) s 237.

406 See, *Health Practitioner Regulation (Adoption of National Law) Act 2009* (NSW) s 143A; *Health Care Complaints Act 1993* (NSW) s 98; *Health Practitioner Regulation National Law Act 2009* (Qld) s 146; *Health Ombudsman Act 2013* (Qld) ss 261, 262, 263.

407 *Human Rights Commission Act 2005* (ACT); *Health Care Complaints Act 1993* (NSW); *Health and Community Services Complaints Act* (NT); *Health Ombudsman Act 2013* (Qld); *Health and Community Services Complaints Act 2004* (SA); *Health Complaints Act 1995* (Tas); *Health Complaints Act 2016* (Vic); *Health and Disability Services (Complaints) Act 1995* (WA).

408 *Human Rights Commission Act 2005* (ACT) s 100A; *Health Care Complaints Act 1993* (NSW) s 96(2); *Health and Community Services Complaints Act* (NT) ss 95(1), 96(1); *Health Ombudsman Act 2013* (Qld) s 275(2); *Health and Community Services Complaints Act 2004* (SA) s 83(1); *Health Complaints Act 1995* (Tas) s 73; *Health Complaints Act 2016* (Vic) s 76; *Health and Disability Services (Complaints) Act 1995* (WA) s 70.

409 *Human Rights Commission Act 2005* (ACT) s 98; *Health Care Complaints Act 1993* (NSW) s 98; *Health and Community Services Complaints Act* (NT) ss 93, 94; *Health and Community Services Complaints Act 2004* (SA) ss 78, 79; *Health Complaints Act 1995* (Tas) ss 67, 68; *Health Complaints Act 2016* (Vic) s 80; *Health and Disability Services (Complaints) Act 1995* (WA) s 73.

410 *Health Ombudsman Act 2013* (Qld) ss 261(1), 262.

411 *Health Ombudsman Act 2013* (Qld) s 263.

412 The Education and Care Services National Law regulates services providing education and care to children 12 years old or younger (with some exceptions such as schools). All states and territories have enacted legislation applying the National Law as set out in the schedule to the *Education and Care Services National Law Act 2010* (Vic); *Education and Care Services National Law (ACT) Act 2011* (ACT) s 6; *Children (Education and Care Services National Law Application) Act 2010* (NSW) s 4; *Education and Care Services (National Uniform Legislation) Act 2011* (NT) s 4; *Education and Care Services National Law (Queensland) Act 2011* (Qld) s 4; *Education and Early Childhood Services (Registration and Standards) Act 2011* (SA) s 10(1); *Education and Care Services National Law (Application) Act 2011* (Tas) s 4; *Education and Care Services National Law Act 2010* (Vic) s 4; *Education and Care Services National Law (WA) Act 2012* (WA) s 4.

413 *Education and Care Services National Law* (Cth) ss 296, 297.

414 *Education and Care Services National Law* (Cth) ss 297, 298, 299.

415 There are many ways in which internal complaints may be made. A person may make a complaint to their employer, an educational institution, a youth detention centre, a residential care facility, a hospital, a childcare facility, an out-of-home care service provider, a religious institution or a service for children with disability. The person making the complaint may be a student, a parent, a guardian, a carer, a teacher, a resident, a patient, a visitor, a volunteer or a staff member. The complaint may be oral or written.

416 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 29(1). The reporter is also protected if a complaint is made in accordance with an agreement between the head of the child protection authority and a government agency under which staff members refer matters for internal assessment before reporting under child protection legislation: *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 27A(2), (7).

417 *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 29(1), (6) (definition of ‘report’).

418 *Education (General Provisions) Act 2006* (Qld) ss 365(1), (2); 365A(1), (2); 366(1), (2); 366A(1), (2).

419 *Education (General Provisions) Act 2006* (Qld) ss 365, 365A, 366, 366A.

420 *Education (General Provisions) Act 2006* (Qld) ss 365(6), 365A(8), 366(5), 366A(7).

421 *Public Interest Disclosure Act 2013* (Cth); *Public Interest Disclosure Act 2012* (ACT); *Public Interest Disclosures Act 1994* (NSW); *Public Interest Disclosure Act* (NT); *Public Interest Disclosure Act 2010* (Qld); *Whistleblowers Protection Act 1993* (SA); *Public Interest Disclosures Act 2002* (Tas); *Protected Disclosure Act 2012* (Vic); *Public Interest Disclosure Act 2003* (WA).

422 *Public Interest Disclosure Act 2012* (ACT) s 8(2) (definition of ‘conduct’ para (a)); *Public Interest Disclosures Act 1994* (NSW) ss 4 (definition of ‘corrupt conduct’), 10; *Public Interest Disclosure Act 2010* (Qld) s 13(1)(a)(i) and dictionary (definition of ‘corruption’); *Protected Disclosure Act 2012* (Vic) ss 3 (definition of ‘corrupt conduct’), 4, 9(1).

423 *Public Interest Disclosure Act 2013* (Cth) s 29(1)(c); *Public Interest Disclosure Act 2012* (ACT) s 10(a)(ii); *Public Interest Disclosures Act 1994* (NSW) s 4A(1) (definition of ‘public official’); *Public Interest Disclosure Act 2010* (Qld) s 7(1) and dictionary (definition of ‘employee’); *Public Interest Disclosure Act 2003* (WA) ss 3 (‘public interest information’), 5(1).

424 See, for example, *Public Interest Disclosure Act 2013* (Cth) s 29(1)(b); *Public Interest Disclosure Act* (NT), s 5(1); *Whistleblowers Protection Act 1993* (SA) ss 4(1) (definition of ‘public interest information’, para (b)), 5(1); *Public Interest Disclosures Act 2002* (Tas) s 6(1); *Protected Disclosure Act 2012* (Vic), s 4(2)(b); *Public Interest Disclosure Act 2003* (WA) s 3 (definition of ‘public interest information’).

425 *Public Interest Disclosure Act 2012* (ACT) s 8(2) (definition of ‘conduct’, para (b)(ii)). See also *Public Interest Disclosure Act 2013* (Cth) s 29(1), table, item 5; *Public Interest Disclosures Act 1994* (NSW) ss 4 (definition of ‘corrupt conduct’), 10; *Public Interest Disclosure Act* (NT) ss 4 (definitions of ‘public interest disclosure’ and ‘public interest information’), 5(1)(a)(iv), 10; *Public Interest Disclosure Act 2010* (Qld) s 13(1)(a)(i) and dictionary (definition of ‘corrupt conduct’); *Protected Disclosure Act 2012* (Vic) ss 3 (definition of ‘improper conduct’), 4(1)(a) and (b), (2)(c), 9(1); *Public Interest Disclosures Act 2002* (Tas) ss 3(1) (definitions of ‘corrupt conduct’ para (c) and ‘improper conduct’ para (b)), 6.

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430 *Public Interest Disclosure Act* (NT) s 10(1); *Whistleblowers Protection Act 1993* (SA) ss 5(1), 9; *Protected Disclosure Act 2012* (Vic) s 9(1); *Public Interest Disclosure Act 2003* (WA) s 5(1).

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- 432 *Public Interest Disclosure Act 2013* (Cth) s 10(1)(a); *Public Interest Disclosure Act 2012* (ACT) s 35(a)(ii), (a)(iii) and (c) (in respect of a public official); *Public Interest Disclosures Act 1994* (NSW) s 21; *Public Interest Disclosure Act* (NT) s 14(1)(b); *Public Interest Disclosure Act 2010* (Qld) s 36; *Public Interest Disclosures Act 2002* (Tas) s 16; *Protected Disclosure Act 2012* (Vic) s 39(1); *Public Interest Disclosure Act 2003* (WA) s 13(b). In South Australia, there is no specific provision concerning disciplinary action, but a whistleblower may have some protection from disciplinary action by the victimisation provision, which makes it a tort to cause detriment to another on the ground of making a disclosure under the Act: *Whistleblowers Protection Act 1993* (SA) s 9.
- 433 *Public Interest Disclosure Act 2013* (Cth) s 10(1)(b). In NSW, this is not specified but is probably implicit: *Public Interest Disclosures Act 1994* (NSW) s 21(1).
- 434 *Public Interest Disclosure Act 2013* (Cth) s 10(2)(a); *Public Interest Disclosure Act 2012* (ACT) s 36; *Public Interest Disclosures Act 1994* (NSW) s 21; *Public Interest Disclosure Act* (NT) s 14(2); *Public Interest Disclosure Act 2010* (Qld) s 38; *Protected Disclosure Act 2012* (Vic) s 41. Western Australia, South Australia and Tasmania do not specifically provide for this: see *Whistleblowers Protection Act 1993* (SA); *Public Interest Disclosures Act 2002* (Tas); *Public Interest Disclosure Act 2003* (WA).
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 461 *Children, Youth and Families Act 2005* (Vic) s 245(6)(7).
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3 Improving institutional responses to complaints of child sexual abuse

3.1 Overview

Throughout our case studies and private sessions, we heard many cases of institutions that were deficient in appropriately responding to complaints of child sexual abuse. In particular, we heard that many institutions had not developed or implemented clear and accessible complaint handling policies and procedures that could guide them on how to respond to complaints. We were told many institutions would benefit from guidance on how to respond well to child sexual abuse complaints.

In this chapter we:

- provide an overview of complaint handling, including what we mean by the term ‘complaint’ and types of complaints concerning institutional child sexual abuse
- explain some of the common institutional problems in complaint handling
- explain how institutions can improve complaint handling by being child safe
- provide guidance to help institutions improve their responses to complaints of child sexual abuse.

As outlined in Chapter 3 of Volume 6, *Making institutions child safe*, appropriate complaint handling and response to complaints of child sexual abuse is an essential standard of a child safe institution. This chapter is an expansion of our work on child safe institutions and reflects the significance of this work for the Royal Commission. It aims to help institutions implement the Child Safe Standards from a complaint handling perspective, particularly Standard 6: Processes to respond to complaints of child sexual abuse are child focused.

3.2 Understanding complaint handling

In this section on complaint handling we:

- explain the term ‘complaint’ in further detail and outline the types of complaints that can be made about child sexual abuse
- give an overview of legislative, regulatory and other obligations for responding to complaints
- outline some existing guidelines for handling complaints.

3.2.1 Defining a complaint

A ‘complaint’ includes any allegation, suspicion, concern or report of a breach of the institution’s code of conduct. It also includes disclosures made to an institution that may be about or relate to child sexual abuse in an institutional context.

An institution may receive a complaint:

- directly or through a redress scheme
- from anyone – a child, adult survivor, parent, trusted adult, independent support person, staff member, volunteer or community member. Generally, the person making the complaint names or identifies themselves. Occasionally, complaints may be made anonymously
- about an adult allegedly perpetrating child sexual abuse or about a child exhibiting harmful sexual behaviours
- in writing, verbally or as a result of other observations, including behavioural indicators.

We recognise that not all institutions refer to a ‘complaint’ in the same way. Some institutions, for example, have encouraged people to ‘speak up’ about their concerns,¹ referred to both ‘complaints or concerns’, or used the term ‘allegation’.

A complaint may become a ‘report’ to an external authority or agency. The definition for ‘report’ is in Chapter 1 of this volume.

3.2.2 Types of complaints concerning child sexual abuse

To respond effectively to a complaint of child sexual abuse, institutions must understand what constitutes a complaint and the types of complaints they may receive. Many types of complaints relating to child sexual abuse could be made to an institution.

Complaints by concerned parents, carers, staff and other adults

Most complaints of institutional child sexual abuse that an institution receives come from a parent, carer, staff member, volunteer, independent support person or other adult associated with the institution. Generally, they inform the institution that they know or are concerned that a staff member or other adult associated with the institution has sexually abused, is sexually abusing or might sexually abuse a child. They may also make a complaint involving children with harmful sexual behaviours.

Disclosures

‘Disclosure’ is defined in Chapter 1 of this volume. We consider that a disclosure made to an institution that may be about or relate to child sexual abuse in an institutional context is a complaint.

For further information on identifying and disclosing child sexual abuse, see Volume 4, *Identifying and disclosing child sexual abuse*.

Complaints of historical abuse

Historical abuse relates to child sexual abuse that is not current or recent – that is, where a person who was sexually abused as a child is now an adult. In our case studies and private sessions, many survivors told us about incidents of sexual abuse that occurred many years ago. We refer to these individuals as adult survivors. A complaint of historical abuse may be made to an institution by an adult survivor or a third party, such as a family member.

Complaints involving children with harmful sexual behaviours

A complaint might be about a child who has sexually abused, or is at risk of sexually abusing, another child. We refer to these complaints as being about ‘children with harmful sexual behaviours’ (see Chapter 1 of this volume for the definition of this term).

Complaints about harmful sexual behaviours by children usually warrant a different response to those about alleged adult perpetrators. When managing these types of complaints, the institution needs to make reference to its child protection and complaints policies. We provide guidance on responding to harmful sexual behaviours in children in Section 3.5, ‘Child focused complaint policies and procedures’. For further information, see Volume 10, *Children with harmful sexual behaviours*.

Anonymous complaints

Anonymous complaints are those made by someone who does not identify themselves. Anonymous complaints may be made for several reasons. The complainant may fear repercussions, such as threats to employment conditions or to the provision of services.² They also might not want to be involved in a complaint handling process, especially where the institutional culture does not encourage the making of complaints or support those who complain of child sexual abuse.³

Unsubstantiated complaints

Some child sexual abuse complaints made to child protection authorities or within institutions are not substantiated for various reasons. Victims can find it difficult – or impossible – to have their complaint of institutional child sexual abuse substantiated. Reasons for this include that child sexual abuse is generally committed by the perpetrator when they are alone with the victim. That a complaint remains unsubstantiated does not mean that the alleged abuse did not occur.

The proportion of unsubstantiated complaints made to authorities within an institution is difficult to calculate. However, contemporary Australian data on the numbers of children who were the subject of a substantiated report of child abuse or neglect to child protection authorities is available.

The Australian Institute of Health and Welfare (AIHW) refers to substantiation in this context as when child protection notifications are, firstly, investigated and, secondly, indicate there is sufficient reason for believing that the child had been, was being or was likely to be sexually abused.⁴ According to the AIHW's *Child protection Australia 2014–15* report, 12.9 per cent of substantiated reports of child abuse related to sexual abuse. Emotional abuse (43.1 per cent) followed by neglect (25.9 per cent) and physical abuse (18 per cent) were the more common types of child abuse substantiated.⁵

False complaints

False allegations of child abuse and neglect, including child sexual abuse, are rare.⁶ In a study of 551 child protection reports regarding child sexual abuse made over a 12-month period in the United States, only 1.5 per cent of reports were deemed to be based on false allegations made by children.⁷ This study defined false allegations as where a child 'had definitely made a fabricated allegation'.⁸ These cases were differentiated from situations where an adult made a fabricated or malicious allegation, or overreacted and assumed that child sexual abuse had occurred when it had not.⁹ The researchers who undertook this study noted:

The fact that many children do not reveal their sexual abuse spontaneously (based on prevalence studies ...) is a far greater problem than the relatively small number of cases ... where the child presents with an erroneous concern and the even smaller number of cases where the child makes a deliberately false allegation.¹⁰

A Canadian study presents similar findings. Child protection authorities found that few child sexual abuse reports were intentionally false – that is, considered by child protection workers to have been made maliciously.¹¹ None of the allegations that were false were made by children themselves.¹² We are not aware of comparable Australian research about intentionally false allegation rates.

Rather than making a false allegation, a child who has experienced sexual abuse is more likely to deliberately choose to not disclose the abuse or, alternatively, to not disclose it because they have blocked it from memory.¹³

3.2.3 Obligations for responding to complaints

Legislative obligations

Certain institutions may be subject to state and territory legislation that requires them to respond to a complaint of child sexual abuse in a certain way. For example, an institution may be required by law to:

- report to the police, child protection authorities and oversight bodies (see Chapter 2 for more detail on obligatory reporting)
- comply with relevant privacy laws
- afford procedural fairness to those adversely affected by proposed findings of investigations.

Legislative requirements depend on the state or territory in which the institution operates, the nature of the institution and, in some cases, the circumstances of the complaint. The laws setting out these requirements change from time to time, as do regulatory or other instruments that reflect those laws.

Those responsible for complaint handling processes within an institution need to understand the legal requirements that an institution must follow when handling complaints. They also need to ensure that the institution's policies and procedures are consistent with these requirements.

Government institutions tend to have a more prescriptive legislative framework for complaint handling than non-government institutions. For example, in some jurisdictions, legislation, and the policies that give effect to this legislation, set out how relevant government institutions must handle complaints about government school teachers,¹⁴ staff in detention centres¹⁵ and public sector employees generally.¹⁶

Regulatory obligations

In addition, certain sectors that provide child-related services, such as education and childcare, are subject to sector-specific complaint handling regulations. In Queensland, licensed childcare providers must keep records of written complaints they receive about the childcare services they provide and the action they subsequently take.¹⁷ Non-government schools in some Australian jurisdictions must have a complaint handling policy as a condition of registration.¹⁸ This obligation may be imposed through a legislative requirement to comply with administrative standards.¹⁹

Under the national regulatory scheme for ‘education and care services’, which covers childcare services and out-of-school-hours care, institutions must have complaint handling policies and make them accessible to clients. A provider of an education and care service must ensure the service has policies and procedures for dealing with complaints; however, the contents of these policies and procedures are not prescribed. The provider must also display the contact details of the person to whom complaints may be made.²⁰

Other obligations

Institutions that respond to complaints of child sexual abuse must also adhere to any contractual arrangements that set out how complaints are to be handled. For example, funding agreements between governments and service providers may require the service provider to adopt certain complaint handling measures or to make their complaint handling procedures known to clients. These provisions are a standard part of arrangements for the funding of out-of-home care services and disability services.

Sometimes legislation imposes conditions relevant to complaint handling upon institutions that receive government funding. For example, in New South Wales, disability service providers must comply with the disability service standards to receive funding.²¹ The disability service standards provide that, when a person wants to make a complaint, the service provider will make sure the person’s views are respected, and that they are informed as the complaint is dealt with and can be involved in the resolution process.²² Failure to comply with a funding agreement or funding conditions could lead to suspension or termination of the financial assistance.²³

Industrial agreements, such as enterprise agreements, may also require procedures to be followed when a complaint is made about a staff member of an employer institution. An institution that is party to an enterprise agreement under the *Fair Work Act 2009* (Cth) is prohibited from contravening a term of that agreement.²⁴ If it contravened a term of an agreement – for example, by not following complaint procedures that were the subject of the agreement – an employee or union could apply for a civil remedy.²⁵

3.2.4 Existing guidelines for handling complaints

Various organisations have developed principles, standards and guidelines relevant to complaint handling. International and Australian children’s advocacy and service organisations have identified principles and features of complaint handling processes suitable for use by organisations that provide services to children.²⁶ Government and non-government organisations have also developed principles, standards and guidelines for complaint handling and investigation, which can be tailored to different institutions, situations and types of complaints.²⁷

Complaint handling and investigation standards

The international standard for complaint handling, ISO 10002:2014 *Quality management – Customer satisfaction – Guidelines for complaints handling in organizations*²⁸ was developed by the International Organization for Standardization (ISO), a non-government organisation that develops voluntary standards for different organisations and industries.

The Council of Standards Australia has an Australian Standard for complaint handling aligned with the international standard, AS ISO 10002-2006 *Customer satisfaction – Guidelines for complaints handling in organizations*.²⁹ The Australian Standard provides guidance on designing and implementing an effective complaint handling process for organisations engaged in different activities.

The Australian Government Investigation Standards establish minimum standards for Australian Government agencies investigating alleged breaches of the law as it applies to the programs and legislation that agencies administer.³⁰ The work of investigating complaints is integral to the process of handling complaints and these standards provide relevant guidance for agencies and investigators.

Ombudsmen’s complaint handling guidelines

Federal, state and territory ombudsmen publish guidelines, manuals and fact sheets that outline the principles of good complaint handling and investigation frameworks.³¹ The principles reflect those of the Australian Standard, and are general complaint handling and investigation frameworks that do not have child sexual abuse as a main focus. Most principles are aimed at responding to complaints made by adults. Although ombudsmen deal primarily with complaints against government agencies, their guidelines are useful for non-government institutions, including those providing services to children. We outline the features that various ombudsmen view as essential to good complaint handling in Table 7.6.

Table 7.6 – Handling complaints effectively – the view of ombudsmen

Feature	Ombudsmen view
Institutional culture	Recognise a person's right to lodge a complaint. A commitment to resolving complaints effectively will benefit an organisation's reputation and administration. ³²
Transparency and access	Ensure complaint handling procedures are well known to clients and staff, and are easy to understand with clear lines of reporting. People should be aware of the right to complain, how and where to do it, and how the complaint will be handled. Help vulnerable clients who may need assistance to make a complaint. ³³
Responsiveness and feedback	Acknowledge and respond to complaints promptly. Inform complainants of the expected timelines and keep them informed throughout the complaint process.
Objectivity and fairness	Address complaints objectively, fairly and impartially. Declare and appropriately resolve conflicts of interest, and observe procedural fairness. Protect complainants from victimisation or harassment. ³⁴
Staff training and delegation	Train staff in good complaint handling practices and develop their awareness of the need to manage complainant expectations. Support complaints staff in their handling of complaints. ³⁵ Provide specialised training to employees responsible for responding to or investigating complaints of sexual assault. ³⁶
Accountability	Open complaint handling systems to scrutiny by clients, staff, and governance and review bodies. Maintain a complaints register. ³⁷ Keep transparent records of the management and outcome of each complaint.
Continuous improvement	Analyse complaints and patterns of complaints to identify systemic issues and how the system can be improved.
Right of review	Make internal and/or external review of the complaint's outcome available. ³⁸ Make known these avenues of review to the complainant and the subject of a complaint.
Fair remedy	Determine an appropriate remedy, if an investigation substantiates the complaint. ³⁹

Finally, if institutions are to respond effectively to complaints of child sexual abuse then additional guidelines, tailored to suit the work, culture and environment of the institution, are required to assess and manage risk. For example, the National Disability Insurance Scheme's Quality and Safeguarding Framework has been designed to ensure high quality supports and safe service provision environment for all the National Disability Insurance Scheme (NDIS) participants.⁴⁰ The framework articulates how NDIS-related complaints can be made.

3.3 Common problems with institutional complaint handling

Our case studies, private sessions and research identified many common problems with institutions' responses to complaints of child sexual abuse. These deficiencies in complaint handling detrimentally affected the lives of survivors, their families and the broader community.

Many survivors and their families told us that their experiences of an institution's poor response to complaints of child sexual abuse elicited a sense of profound betrayal.⁴¹ This was supported by commissioned research on the impacts of institutional child sexual abuse.⁴² This sense of 'institutional complicity and betrayal' may be associated with increased levels of anxiety, trauma symptoms and dissociation for victims and survivors.⁴³

Additional impacts could depend on the type of institution involved in the response. For instance, we heard in our public hearings about victims suffering a crisis of faith or abandoning their religion following negative responses by church authorities to complaints of children being sexually abused by people in religious ministry or in a religious context.⁴⁴ In contrast, positive institutional responses, such as believing victims, can help to stop the child sexual abuse occurring, minimise further impacts for the victim and promote healing.⁴⁵ In Volume 3, *Impacts*, we discuss the impacts of how institutions responded to survivors.

In this section, we consider the common problems with institutional complaint handling that we identified in our case studies, private sessions and research in the following areas:

- institutional leadership, governance and culture
- complaint handling policies and procedures
- recordkeeping
- education and training
- support and advice
- investigation standards
- responses to children with harmful sexual behaviours
- communication with affected parties
- risk assessment and ongoing review.

Our exploration of problems with complaint handling in these areas informs our work in Section 3.4, 'Improving complaint handling by being child safe' and our guidance on developing complaint handling policies and procedures.

3.3.1 Leadership, governance and culture

In our case studies we heard evidence of institutional cultures that deterred victims and others from making complaints. Some institutions developed cultures that discouraged individuals from making complaints⁴⁶ and either did not respond to complaints,⁴⁷ punished complainants,⁴⁸ or protected the institution⁴⁹ or the alleged perpetrator,⁵⁰ rather than protecting the child or children at risk. Many of the institutions considered did not report the sexual abuse of children to the police.⁵¹ In others, leadership and governance arrangements were inadequate to hold senior staff members accountable for responding effectively to complaints.⁵²

Commissioned research on organisational culture and institutional child sexual abuse reinforces these accounts. Commissioned research suggests that when it comes to cultures of senior management:

it is likely that leaders are immersed in cultures that prioritise protecting the organisation's public image and reducing its exposure to legal challenges, even at the expense of protecting the interests of workers, clients and other organisational stakeholders. Thus, while it may seem reprehensible, it should come as no surprise that organisational leaders tend to manage the response to disclosures of child sexual abuse in such a way as to minimise scandal and adverse legal consequences, even though this often results in poor responses to the abuse.⁵³

This research also suggests that if leaders of institutions did not make child safety a priority, this created a culture that could prevent child sexual abuse complaints from being made.⁵⁴ Interrelated to this, the research also suggested that poor institutional cultures are likely to deter staff from adhering to complaint handling policies and procedures.⁵⁵

Power differences between staff, and between staff and victims, can also change the manner in which an institution responds to complaints. For example, when a staff member in an institution tries to make a complaint of suspected child sexual abuse against another staff member who is more senior within the institution's hierarchy, the complaint could be rebuffed.⁵⁶

This research also examined the cultures of 'total institutions' and the implications for child sexual abuse.⁵⁷ Total institutions were first defined by Erving Goffman in 1961, and continue to inform current research. Goffman defined the total institution as:

a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life.⁵⁸

Examples of total institutions identified in the research literature, some of which are institution types we heard about during the course of the Royal Commission, include boarding schools, immigration detention centres, military academies, youth detention facilities and children's residential institutions.⁵⁹ However, the degree to which institutions display the characteristics of a total institution can vary.⁶⁰

Commissioned research suggests that these institutions tend to conduct their operations in secret.⁶¹ The consequence of total institution cultures is that they can impede detection of and undermine appropriate responses to child sexual abuse when it occurs.⁶²

Responding to victims with inaction or punishment

Cultures of inaction or punishment in response to victims who made complaints existed in a number of institutions we examined. Some of these institutions are discussed below.

Schools

In our case studies, we heard many examples of schools providing inadequate institutional responses to child sexual abuse. In many cases, even though the victim complained, the school took no or inadequate steps to stop the abuse.⁶³ *Case Study 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009 (Perth independent school)* is an example of the harm that can arise when 'sufficient and correct significance' is not placed on concerns raised in complaints.⁶⁴ At this school:

between 1999 and 2005 there were eight separate occasions when a teacher or parent raised concerns with the then head of the preparatory school or the then headmaster of the school about grooming behaviours or inappropriate touching by the offending teacher.⁶⁵

Professor Stephen Smallbone, a psychologist from the School of Criminology and Criminal Justice at Griffith University, appeared as a witness in this case study and expressed his opinion that, taken together, the history of events at the school indicated 'a serious systemic failure to protect children in the care of the school'.⁶⁶ We concluded that:

upon being faced with the complaints about the offending teacher's conduct, former heads of the preparatory school YN and YK and former headmasters WB and WD did not devise or implement a behavioural modification plan or make changes to the offending teacher's duties that might have precluded or limited his contact with particular children. Instead they relied on the offending teacher to modify his own behaviour. There was no follow-up plan to see or test whether the offending teacher's conduct had in fact been modified.⁶⁷

We found that the then head of the preparatory school, YK, and the then headmasters, WB and WD, did not attach sufficient significance to the complaints made between 2001 and 2005 about the offending teacher's inappropriate and grooming behaviours. They did not seek sufficient external advice, make inquiries of the named children (or their parents) or manage the offending teacher's behaviour.⁶⁸ The school accepted that if sufficient and correct significance had been attached to the complaints and concerns when they were raised, the school's response would have been different and could have mitigated the risk of the offending teacher sexually abusing children.⁶⁹

In other cases, schools did take action to respond to complaints of child sexual abuse, but that action was inappropriate or inadequate. For example, in *Case Study 34: The response of Brisbane Grammar School and St Paul's School to allegations of child sexual abuse (Brisbane Grammar School and St Paul's School)*, the school in question removed the teacher who was the subject of the complaint from the school, but did so in a manner that placed other children in danger. The principal of St Paul's, being aware of allegations of child sexual abuse against the teacher, formed the view that the teacher should be removed from the school.⁷⁰ The principal accepted the teacher's resignation and then wrote the teacher a positive reference.⁷¹ The principal, appearing at our public hearing, agreed that he wrote this positive reference 'in total and utter disregard for the welfare of any student at a school that [the teacher]] may have come to be employed ...'.⁷²

Commissioned research that explored children's views of safety in institutions also identified examples where adults in a school context responded to children's concerns about their safety with dismissal or inaction:

When talking about coming across a 'creepy teacher' one group of young people commented that they had raised their concerns with another teacher who dismissed them, because they could not identify concrete examples of things the teacher had done to make them feel that way. This 'creepy teacher' was later dismissed because of inappropriate behaviour and they voiced their frustration that their complaints were not acted upon.⁷³

Children and young people who were consulted with as part of this research talked about the importance of being believed and suggested that institutions should side with them in the first instance and take their concerns seriously. They gave examples of unsafe situations that they could have avoided 'If only they had listened and believed us ...'.⁷⁴

In other research we commissioned, survivors discussed how their childhood complaints of sexual abuse were minimised, denied or dismissed by religious institutions, including schools managed by religious institutions. Some survivors said the authority of an institution, where that institution had an accepted culture of mistreating children, prevented them from speaking up. 'Dean', a survivor now in his sixties, disclosed his experience of sexual abuse at a school managed by a religious institution to his parents at the time. 'Dean' stated: 'I think in our case the word of children – children were regarded with – just dismissed ... Our complaints were just dismissed. They were just not considered worthy of examination ...'.⁷⁵

Youth detention facilities

A similar theme arose in our consultations with young people in youth detention facilities, where we heard that institutional cultures of inaction or punishment remained a problem.⁷⁶ Most participants in our consultations told us that if they experienced or were aware of child sexual abuse they would not make a complaint because they felt they would not be responded to, they would not be believed or listened to, or they preferred to deal with the issue themselves.⁷⁷

Some participants in these consultations said they felt they did not have a voice or that their concerns were not listened to. They told us there was an ‘us versus them’ culture where custodial staff stuck together and always believed other staff over children in detention.⁷⁸ We heard examples of staff openly destroying complaints forms, threatening young people with confinement if they made complaints and giving support to staff who were the subject of complaints over residents who complained.⁷⁹

The National Children’s Commissioner, Ms Megan Mitchell, in her 2016 consultations with children and young people in youth detention facilities across Australia, made a similar observation. Ms Mitchell stated that ‘Although some of the children and young people I spoke with knew how to make a complaint if something was wrong, many of them didn’t or didn’t want to’.⁸⁰

Disability support services

We heard that in some situations, children with disability and their families or carers who rely on support services fear the institutions might punish them if they make a complaint of child sexual abuse. For instance, the Victorian Disability Services Commissioner submitted:

People with a disability and their families/carers may fear retribution through withdrawal of services or that they (or their child/adult) might be treated differently to others as a consequence of the complaint.⁸¹

Reinforcing this point, the NSW Deputy Ombudsman, who is also Community and Disability Services Commissioner, gave evidence that children and their carers sometimes ‘fear that they may lose critical support services if they complain’.⁸² Research also suggests that children and carers fear that disability support services will be interrupted or removed, and that this fear means they delay coming forward to make a complaint.⁸³

The Australian Defence Force

In *Case Study 40: The response of the Australian Defence Force to allegations of child sexual abuse (Australian Defence Force)*, we examined the responses of the Australian Department of Defence and the Australian Defence Force to allegations of child sexual abuse.⁸⁴ We heard evidence that two defence training establishments, HMAS Leeuwin and The Army Apprentice School in Balcombe, had an unofficial rank hierarchy that encouraged a culture of intimidation,

‘bastardisation’ (routine humiliation) and abuse by senior recruits.⁸⁵ Senior recruits were often placed in positions of power.⁸⁶ This environment encouraged fear of retribution for being a ‘dobber’ and discouraged complaints of abuse at the time.⁸⁷

A report of an inquiry into allegations of sexual and other abuse at HMAS Leeuwin, published by the Defence Abuse Response Taskforce in 2014, found that where junior recruits made a complaint of abuse, the majority of complaints were not acted on or staff dissuaded junior recruits from continuing with a complaint. Some junior recruits were disbelieved and/or punished for making a complaint.⁸⁸ During the *Australian Defence Force* public hearing, some survivors gave evidence that the immediate response to their complaints of sexual abuse was actual or threatened discharge, no action at all, or staff not believing them.⁸⁹ In some cases, the response to the complaint was punishment and further physical and sexual violence.⁹⁰ One survivor said that his previous experience of making complaints of sexual abuse, which resulted in a threat of dishonourable discharge, ‘instilled a lifelong distrust of authority, and from that point on, [he] did not again willingly report any incident to staff for fear of similar repercussions’.⁹¹

Children’s residential institutions

Victims who made child sexual abuse complaints in children’s residential institutions often encountered institutional cultures of retribution or inaction.⁹² For victims, the environment of some of these settings was characterised by neglect and physical, emotional and sexual abuse. Victims rarely received a compassionate or effective response when they complained. We were made aware of negative responses or inaction in both historical and contemporary institutions.

Three of our case studies examined the experiences of children in historical residential institutions.

In *Case Study 5: Response of The Salvation Army to child sexual abuse at its boys’ homes in New South Wales and Queensland*, we considered how The Salvation Army Australia Eastern Territory responded to child sexual abuse that occurred in four of its boys’ homes between the late 1950s and the early 1970s.⁹³ Officers or employees of The Salvation Army sexually abused boys in each of the four homes.⁹⁴ Many boys in the homes were also sexually abused by boys residing in the same home.⁹⁵ In all four of the homes, there was physical abuse and a culture of frequent and excessive physical punishment, which was occasionally brutal.⁹⁶

This case study highlighted how difficult it was for victims to make disclosures or complaints about child sexual abuse within an abusive environment. Boys who complained were punished, disbelieved or accused of lying, and sometimes no action was taken.⁹⁷ As a result, some victims did not complain about sexual abuse.⁹⁸ During this era, officers at the divisional and territory headquarters of The Salvation Army had a practice of deferring to the manager of the boys’ home when an officer or resident had made a complaint about that manager.⁹⁹ On the occasions that senior staff of The Salvation Army were made aware of an allegation of child sexual abuse by a staff member, it was not investigated.¹⁰⁰

In Case Study 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay, survivors described the physical and sexual abuse that occurred in two residential girls' homes in Parramatta and Hay.¹⁰¹ This abuse occurred between 1950 and 1974,¹⁰² with both institutions inflicting a regime of harsh rules and treatment. Girls were not permitted to speak unless spoken to; they could go to the toilet only at certain times of day; they were denied privacy; and they were punished by being sent to an isolation cell.¹⁰³ Some male staff frequently bashed and sexually assaulted girls at the homes.¹⁰⁴

Survivors who were former residents told us they did not complain about the abuse at the time for reasons such as: they felt nobody at the institution would believe them; they felt too ashamed; they were afraid of being punished for complaining; and they feared retribution from the alleged perpetrators.¹⁰⁵ Some told us that when they disclosed the abuse years later to a family member, a psychiatrist or police officers, they were still not believed.¹⁰⁶

In Case Study 17: The response of the Australian Indigenous Ministries, the Australian and Northern Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home, we examined the sexual abuse of Aboriginal and Torres Strait Islander children at the Retta Dixon Home and what happened to these children when they disclosed the abuse.¹⁰⁷ Children at the home had been forcibly removed from their families and placed in residential care¹⁰⁸ where they were intentionally cut off from their communities, cultural identity and heritage.¹⁰⁹ Not only were many of these children sexually abused in state care, but the institution responded punitively to those children who complained about the abuse. We heard evidence that, in the 1960s and 1970s, several former residents told a superintendent they were being sexually abused.¹¹⁰ The superintendent took no action to respond to the complaints of sexual abuse, and moreover caned some of them for 'lying'.¹¹¹

In Volume 11, *Historical residential institutions* we describe the environment of these residential institutions in more detail and consider how, before 1990, responses to complaints of child sexual abuse were also often met with punishment and inaction.

We also heard more recent examples of poor complaint handling in residential institutions, resulting in inaction or punishment. 'Lianna', the mother of a child with cognitive disability, told us in a private session about the institutional response to the sexual abuse that her daughter 'Nicole' experienced while staying in a public residential respite care facility in the late 1990s.¹¹² 'Lianna' told us that she reported the abuse to the police and the department that oversaw the facility after 'Nicole' disclosed the abuse to her. At the time, we were told that 'Lianna' felt the staff at the respite facility 'rallied around' the alleged perpetrator and were reluctant to believe the complaint, despite the alleged perpetrator being the subject of two other complaints of alleged abuse at the same facility. We were told that the alleged perpetrator was at first stood down, but when the police decided not to press charges he was reinstated at a different facility. We were told that he was then stood down again while the department launched an investigation into his conduct, which was discontinued when the alleged perpetrator resigned and moved interstate. 'Lianna' told us she felt that 'at the end of the day' the abuse was 'swept under the carpet'.

In consultations for a commissioned research project about children in contemporary residential care settings and their perceptions of safety, children described a culture of institutional inaction with respect to complaints.¹¹³ The report described that:

A number of young people, however, felt that rules were in place for workers rather than for residents. They believed that rules would be enforced by workers who wanted them to do something or stop them from doing something else, but that when young people made complaints because someone else was not following the rules, little action followed.¹¹⁴

Children also noted that staff were often unavailable when young people needed them to manage situations. For example, some children felt their safety was jeopardised at night because of bullying or harassment by peers.¹¹⁵

Additional or diverse needs

We heard that some institutions showed indifference towards victims with additional or diverse needs, and that the institution neither anticipated nor recognised those needs as part of complaint handling processes.

For example, in case studies and private sessions we were told of institutions that did not provide the necessary tools to enable victims with communication support needs to make a complaint.¹¹⁶ We also heard that some institutions responded to complaints made by victims from culturally and linguistically diverse backgrounds or Aboriginal and Torres Strait Islander victims without providing language supports, such as an interpreter.¹¹⁷ Sometimes victims and their families said institutions responded in culturally inappropriate¹¹⁸ or unsafe ways.¹¹⁹ Aboriginal and Torres Strait Islander survivors told us past and sometimes ongoing experiences of abuse and injustice mean they lack trust or confidence in institutions and government authorities.¹²⁰ This issue was also reported in commissioned research.¹²¹

We also heard about institutions within small multicultural communities that responded to complaints of abuse with inaction.¹²² We were told that in some communities there may be pressure on institutional leaders to prioritise community harmony over the interests of individual complainants,¹²³ and that there may be high personal costs to reporting in the community.¹²⁴ We were also told these institutional leaders may minimise abuse over fears that complaints would bring negative attention on the community from wider Australian society, and intensify existing feelings of alienation or ostracism.¹²⁵

Responding to staff or others with punishment or inaction

Institutional cultures in which complaints of child sexual abuse are met with punishment or inaction damage not only victims, but also staff and others who make complaints. Some institutions have cultures where staff may be reluctant to make complaints because they fear reprisals.¹²⁶ Studies of staff who make voluntary complaints reveal this is a well-founded concern.¹²⁷ Research about whistleblowing reveals:

Retaliation comes in many forms including ad hominem attacks [attacks on a person's character], increased monitoring of work performance, demotion or denial of promotion, social ostracism, referral to a mental health professional, being fired, counter accusations, and professional blacklisting.¹²⁸

Illustrating this, at one private session an attendee told us that after she raised concerns about the handling of complaints of child sexual abuse in her workplace, attempts were made to silence her and she was labelled the 'Wicked Witch of the West'.¹²⁹

In submissions to our consultation papers, some stakeholders expressed concerns about staff experiencing negative repercussions for making complaints.¹³⁰ One stakeholder, who had experienced such repercussions firsthand, submitted:

Cultures of fear, self-censoring and obedience to authority inhibit many staff from speaking up about child sexual abuse when they become aware of it within their workplace ... The unfavourable repercussions are real and can be damaging leading for example to adverse action, to job loss, loss of other opportunities within the work place.¹³¹

In the *Perth independent school* case study, we examined an example of an institutional culture in which staff suffered negative consequences for making complaints.¹³² In this instance, the three teachers who made complaints about an offending teacher at their school all gave evidence that they were concerned they would be subjected to rejection, ostracism, bullying or harassment by other staff members for making a complaint.¹³³ One of these teachers stated that she left the school because of the bullying and mistreatment that began after she made a complaint.¹³⁴ Our finding was that there was a culture at the school where some of the staff members and one parent felt that, if they raised concerns about another staff member, they may be ostracised by parts of the school community.¹³⁵

Case Study 39: The response of certain football (soccer), cricket and tennis organisations to allegations of child sexual abuse (Sporting clubs and institutions) also gave insight into the victimisation that can occur when a staff member raises a complaint about another staff member.¹³⁶ In this case study, a young tennis player, BXJ, in the mid-1990s confided in the Assistant State Coach for Tennis NSW that she had been sexually abused by her coach Mr Noel Callaghan.¹³⁷ The Assistant State Coach, Ms Amanda Chaplin, reported the allegations to the General Manager of Tennis NSW.¹³⁸ Ms Chaplin told us that from the time she first

reported the allegation, she was subjected to victimisation that included Mr Callaghan's son firing tennis balls at her at squad training, Mr Callaghan's family and friends enclosing her in an area and making unpleasant remarks, and being undermined by Mr Callaghan in front of players and parents.¹³⁹ Ms Chaplin was also told by a friend that Mr Callaghan's wife had threatened to kill her.¹⁴⁰ The Royal Commission found there was a lack of support by Tennis NSW for Ms Chaplin and that Tennis NSW had failed to take appropriate steps to protect her from victimisation.¹⁴¹ In April 2000, Ms Chaplin resigned from Tennis NSW, citing 'victimisation and lack of support' as the reason for her resignation.¹⁴²

Staff may also be deterred from making complaints if they believe the institution has a culture of inaction or of not responding fairly and effectively to complaints. In a private session, 'Timothy', a teacher, told us about his experience of making a complaint about the priest who worked at the school where he taught.¹⁴³ We were told that when 'Timothy' made a complaint to a church leader for that diocese, the leader responded to the complaint by informing the priest that there were 'concerns' about how he was 'handling children in the confessional'. However, no further action was taken. 'Timothy' told us he was outraged but not shocked by the church's response – because there was a view within the church that priests were 'above the law'. 'Timothy' worked for months trying to effect change in the diocese. When no action was taken in response to the allegations, 'Timothy' resigned. His life changed completely: 'My wife and I lost everything and my family was dislocated by the decisions we made, and I have never been employed in education anywhere else in Australia since'.¹⁴⁴

The number and nature of complaints made by staff or volunteers can be influenced by the trust they have that senior personnel will respond appropriately to a complaint and keep the name of the complainant confidential.¹⁴⁵ For example, research suggests that staff members who discover their colleagues or subordinates are engaged in abusive behaviours might be reluctant to make a complaint if they believe that the alleged perpetrator enjoys a favoured personal relationship with their superiors.¹⁴⁶

We were told of instances where an institution's culture did not provide staff with the confidence that it would respond appropriately to complaints of child sexual abuse, particularly with respect to concerns about confidentiality. For example, in *Case Study 2: YMCA NSW's response to the conduct of Jonathan Lord (YMCA NSW)* we found that YMCA Caringbah did not have an effective, confidential complaint handling system in place that staff were aware of and felt comfortable using.¹⁴⁷ One staff member, Ms Danielle Ockwell, gave evidence that she did not feel comfortable raising her concerns about the alleged perpetrator with her immediate manager – 'I didn't trust her and I was worried that if I raised an issue with her she wouldn't take it any further' – or with more senior managers.¹⁴⁸ Ms Ockwell gave evidence that, within the organisation, confidential matters were sometimes communicated to others.¹⁴⁹

Staff who expect complaints of child sexual abuse to be met with punishment of the staff member or inaction by the institution are less likely to make complaints. This illustrates the need for institutions to have complaint handling processes that address and overcome such behavioural and structural impediments. As discussed in Chapter 2, ‘Reporting institutional child sexual abuse to external authorities’, individuals who make complaints or reports of child sexual abuse in good faith should be provided with legislative protections.

Governance cultures that protected the institution or alleged perpetrator

In our case studies, private sessions and research, some institutions had a governance culture of protecting alleged perpetrators or the reputation of the institution itself, rather than protecting children. *Case Study 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales (Knox Grammar School)* is one such example.¹⁵⁰ Child sexual abuse was perpetrated at Knox Grammar School from 1969 to 2003¹⁵¹ by a number of teachers, five of whom were charged and ultimately convicted of child sex offences.¹⁵² We found that Dr Ian Paterson, Headmaster of Knox Grammar School from 1969 to 1998,¹⁵³ fostered an attitude and culture at the school that was dismissive of complaints of child sexual abuse. We also found that by being involved in a cover-up of allegations, withholding certain information from an Inspector of the NSW Police Force and not notifying the parents of boys who made allegations against staff, Dr Paterson failed to prioritise the welfare of the boys at Knox Grammar School over the reputation of the school.¹⁵⁴

In some cases, institutions protected alleged perpetrators because they were well known, powerful and highly regarded in the institution and wider community. They were therefore perceived to have more credibility than a child making a complaint.¹⁵⁵ Such institutional responses were ill-founded, given that research shows that it is extremely rare for children to fabricate complaints.¹⁵⁶

If a child perceives a perpetrator to be highly regarded by others, this can often lead to that child disclosing and then recanting.¹⁵⁷ This pattern can occur as a result of interpersonal dynamics created because the perpetrator has intentionally groomed the child and groomed the institution by manipulating the organisation’s culture and physical environment.¹⁵⁸ Such intentional grooming behaviour is a common characteristic of adults who sexually offend against children in institutions.¹⁵⁹ As a result of such grooming behaviour, staff within an institution may defend the subject of a complaint and disbelieve children who have complained, making it more likely that a child will recant and less likely that other children will make a complaint.

In private sessions, we heard of alleged perpetrators who exploited their authority within an institution to commit child sexual abuse and enable this abuse to go undetected. For instance, ‘Gracie’ told us that she was sexually abused by ‘Pastor Bernie Landon’, who was a high-status member of the community.¹⁶⁰ We were told that he was charismatic, popular and well connected in political and business circles. ‘Gracie’ told us that the abuse occurred in out-of-

home care, in an evangelical institution. We were told that ‘Pastor Bernie Landon’ wielded such influence that he managed to convince people in the community to donate all their assets and money to the institution. Eventually, he received state and national awards and honours for his work in the community. We were told that ‘Pastor Bernie Landon’ sexually abused several girls in the institution, taking advantage of the fact that he was publicly revered.

Social power relationships, such as those constructed by social hierarchies founded in racism, protect alleged perpetrators from institutional action. We were told that Aboriginal and Torres Strait Islander children – who experience high levels of racial discrimination both historically and today¹⁶¹ – assumed that institutions would protect white perpetrators facing allegations of child sexual abuse. The Victorian Aboriginal Child Care Agency (VACCA) told the Royal Commission that, in its experience, Aboriginal and Torres Strait Islander victims rarely complained about child sexual abuse while they were still children, because they did not expect that they would be believed over a white perpetrator.¹⁶² One of VACCA’s clients spoke of their experience and their own perception of their relative powerlessness:

I had never reported the abuse before speaking to the ... police because I didn’t think anyone would believe Aboriginal kids over a white family, especially a family such as the Smiths [name changed]¹⁶³ who had strong connections around town. The Smiths were seen by their community as ‘good Christian people helping poor Aboriginal children’ and who were important to the Church’s work.¹⁶⁴

Research we commissioned into the role of organisational culture in child sexual abuse in institutional contexts suggested that power differentials within an institution could also have the effect of suppressing complaints made about sexual abuse.¹⁶⁵ In Chapter 3 of Volume 6, *Making institutions child safe*, we further detail this research under the Child Safe Standard 1 relating to leadership, governance and culture.

Unaccountable leadership

It is important that all managers and supervisors in institutions accept that they are accountable for complaint handling processes. The YMCA NSW case study is an example of senior management failing to accept responsibility for the actions of staff members. This case study examined YMCA NSW’s response to the conduct of a staff member, Jonathan Lord, who by early 2013 had been convicted of 13 sexual offences involving 12 children.¹⁶⁶ Lord met many of the boys he sexually abused through his work at YMCA NSW, and committed numerous offences on YMCA premises and during YMCA excursions.¹⁶⁷ We found that YMCA Caringbah did not have a culture of vigilance or a sense of shared personal responsibility for the safety of children,¹⁶⁸ and that YMCA NSW senior managers did not accept responsibility for staff not reporting Lord’s policy breaches and other concerning behaviour. We found that the YMCA NSW senior managers were not conversant with legal requirements with respect to carrying out background checking procedures, and they failed to implement the organisation’s child protection

policies and to properly analyse events surrounding Lord's recruitment, induction, training and supervision.¹⁶⁹ Because of these failures, at the time of this case study, we did not have confidence in the capacity of YMCA NSW senior managers to carry out the significant reforms needed to ensure the safety of children in the organisation's care.¹⁷⁰ We did note however that YMCA NSW was taking a range of positive steps to address identified problems and to improve the protection of children in its care.¹⁷¹

In *Case Study 47: Institutional review of YMCA NSW* we received evidence from current YMCA NSW CEO, Ms Leisa Hart, that after the *YMCA NSW* case study, a new executive team was appointed to YMCA NSW, and that Ms Hart was brought on board and tasked with restructuring the organisation.¹⁷² This restructure included, in respect of the Children's Services Division: the creation of Regional Manager roles to 'provide day to day leadership, driving quality outcomes for the programs, compliance to policies and procedures and oversight and escalation points for staff, school principals and parents', and the introduction of specialist best practice roles and systems development to 'focus on quality outcomes for children in ... [YMCA NSW's] care and provide further development for staff'.¹⁷³ We were also informed that after the *YMCA NSW* case study, five of the nine YMCA NSW board members stepped down from their positions. Additionally, one new board member was specifically appointed to 'strengthen child protection knowledge' and another was specifically appointed to 'strengthen expertise in ... organisational culture'.¹⁷⁴

3.3.2 Complaint handling policies and procedures

In the course of our inquiry, we heard of instances in which institutions had not developed or implemented clear and accessible complaint handling policies and procedures that could guide them in responding to complaints.

Inadequate complaint handling policies, procedures and practices

In our case studies, consultations and commissioned research we found that some institutions had no policies to guide staff about how to respond effectively to child sexual abuse complaints.¹⁷⁵ In other instances, government or institutional policies existed but were inadequate.¹⁷⁶

One commissioned research report, *Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts*, identified that it is a rare occurrence for a worker in the course of their working life to knowingly come across a person who sexually abuses children.¹⁷⁷ The implementation of policies and procedures can consequently be hampered by a low level of understanding of the problem of child sexual abuse and a lack of familiarity with the appropriate institutional response.

In several of our case studies that examined institutional responses to complaints of historical child sexual abuse, we observed an absence of institutional complaint handling policies in the institutions being considered.¹⁷⁸ For example, in *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton* the Marist Brothers acknowledged that before the 1990s they had no written policies or procedures for the handling of child sexual abuse complaints.¹⁷⁹

Between 1962 and 1993, numerous complaints were made to the Marist Brothers concerning child sexual abuse perpetrated by Brother Kostka Chute.¹⁸⁰ No written records were kept of these accumulated complaints.¹⁸¹ Brother Chute was moved from one school to another, with each school being unaware of complaints that had been made at former schools.¹⁸² Brother Chute was allowed continued access to children until 1993, when he was removed from teaching.¹⁸³ Similarly, between 1973 and 1987, Brother Gregory Sutton taught at various Australian schools operated by or associated with the Marist Brothers.¹⁸⁴ Despite child sexual abuse complaints against Brother Sutton – as well as his own admission that he had sexually abused a student – the only action taken by the Marist Brothers was to send him to a Canadian treatment centre in 1989.¹⁸⁵

The lack of an adequate complaint handling policy requiring the Marist Brothers to record all child sexual abuse complaints, investigate these complaints and take appropriate disciplinary action, was one of the factors that enabled Brothers Chute and Sutton to continue to sexually abuse children for many years after the initial complaints were made.¹⁸⁶ This resulted in considerable harm to many children.

Case Study 20: The response of The Hutchins School and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school exemplifies the difficulties that arise when an institution lacks policies and procedures for complaint handling.¹⁸⁷ In this case study, we considered historical child sexual abuse in the 1960s at The Hutchins School – an Anglican private school for boys in Hobart – and the response of this school to that abuse. Evidence given by Mr Geoffrey Ayling, who worked as a science teacher at the school between 1962 and 1965, was that the school had no policies or procedures at the time on how to handle child sexual abuse complaints.¹⁸⁸

Mr Ayling gave evidence that a teacher, AOC, left the school. After his departure, rumours circulated as to the reason he had been dismissed. Mr David Lawrence, the Headmaster of the school, asked Mr Ayling to take over AOC's science classes. He discovered that the last notes given by AOC to the boys in the class were specifically focused on male genital organs and their function. They included graphic details about sexual intercourse, masturbation experiences and more. These subjects were not in the syllabus. Mr Ayling gave evidence that he did not report what AOC's notes contained because AOC had already been dismissed. Mr Ayling said he did not think there was any point in taking it further at the time because he did not have any direct knowledge of what AOC had been doing and Mr Ayling was only a very junior teacher at the time.¹⁸⁹

In 1965, Mr Ayling overheard a conversation between Mr Lawrence and AOC, that led Mr Ayling to conclude that both Mr Lawrence and AOC were sexually abusing students.¹⁹⁰ Concerned, and in the absence of any complaint handling guidelines, Mr Ayling consulted a friend, who was a lawyer and an ex-student of the school, about what action to take – but, again, did not notify anyone in authority in the institution.¹⁹¹ Accordingly, the school took no action and Mr Lawrence continued to work there and to have access to children until 1970. In 1970, Mr Lawrence, who was by then aware that the Tasmanian police were investigating him for child abuse, resigned from the school and left Australia.¹⁹² Mr Lawrence was not charged with any child sexual abuse offences because, when the Tasmanian police sought to arrest him, they were told that he had left the school and Tasmania.¹⁹³

Research we commissioned into institutional culture identified that some institutions were more prone to inadequate complaint handling procedures than others.¹⁹⁴ Smaller institutions might be prone to inadequate complaint handling procedures because of the prevailing organisational culture and informal group dynamics.¹⁹⁵ Administrators of sports clubs, for example, could be reluctant to address complaints about child sexual abuse because doing so requires them to choose between defending the accused coaches and supporting the abused athletes.¹⁹⁶ Responding to such complaints can be perceived as clashing with the values of group cohesion.¹⁹⁷

Finally, in our consultations with children and young people we were told about the inadequacies in contemporary institutions' procedures to respond to complaints about online sexual abuse. Many young people felt they could not, or did not feel safe to, make a complaint of online abuse to institutions.¹⁹⁸ This was because they felt adults did not understand the online environment; these young people feared that, if they made such a complaint, adults might judge them rather than help them. Children were also worried that complaints could lead to further bullying. Young people suggested external or anonymous complaint mechanisms could be developed to overcome these challenges. Some young people also told us they would go to a friend or family member for support.¹⁹⁹

Inaccessible and unclear complaint handling policies

Our case studies highlighted the importance of making complaint handling policies accessible and clearly communicating them to those connected to the institution. At one institution we examined, a senior staff member was not aware of existing training on complaint handling,²⁰⁰ while at another institution, teachers and staff had not undertaken any training on complaint handling policy.²⁰¹ In other instances, when complaints were received by the institution, the existing policy was not followed.²⁰²

Some institutions did not inform parents, guardians and carers of the institution's child protection procedures and complaint handling processes. Without this information and an understanding of the conduct expected of staff, parents might not recognise a staff member's breach of the institution's code of conduct. In our *YMCA NSW* case study, Professor Stephen Smallbone advised that YMCA NSW needed to do a great deal of work to improve, simplify and more effectively disseminate relevant policy material.²⁰³ YMCA Caringbah did not have an effective system for ensuring that staff and parents were aware of and understood its child protection policies.²⁰⁴ YMCA Caringbah's failure to ensure that parents knew of and understood YMCA NSW child protection policies contributed to Lord not being reported for his conduct in babysitting and attending activities with children attending YMCA NSW's outside of school hours care.²⁰⁵

We also heard in our private sessions about institutions inadequately communicating their complaint handling policies to children in the institution and to their parents or carers. For example, 'Michael', who told us that his daughter was sexually abused at a local sporting club, observed there was a gap between the club's policies and protocols, and how it operated in practice.²⁰⁶ 'Michael' noted that, during induction processes provided by the club, there was little to no explanation of the club's policies and it relied on volunteer members to inform themselves. His daughter 'Jane' also commented that children in the club never received any instruction about inappropriate behaviours or who to approach if these behaviours occurred.²⁰⁷

The *Australian Defence Force* case study examined the response of the Australian Defence Force (ADF) to allegations of child sexual abuse at HMAS Leeuwin, The Army Apprentice School Balcombe and the ADF Cadets. All institutions were operated by the ADF. Our examination covered systems, policies and procedures to prevent child sexual abuse, and to respond to concerns and complaints about such abuse.²⁰⁸ This case study also examined responses of the Australian Air Force Cadets (AAFC) to allegations of child sexual abuse. We considered evidence of extensive policies and procedures in place within the ADF Cadets and the AAFC, and we concluded that they were unnecessarily duplicative.²⁰⁹ Such policies and procedures are therefore unlikely to be user friendly or effective in ensuring that AAFC staff are properly informed of the AAFC's expectations in relation to the protection of cadets. The ADF accepted the criticism and submitted that since the 2016 public hearing, there has been policy reform.²¹⁰

We heard that the complaint handling policies of some institutions were inaccessible because they did not consider the needs of all stakeholders. For example, in our discussions with multicultural stakeholders, we were told some schools knew that children spoke a certain language at home, but did not translate child protection policies into relevant languages and relate them in a cultural context that parents and carers could understand.²¹¹ The importance of using appropriate language and concepts to communicate about child sexual abuse was also emphasised for Aboriginal and Torres Strait Islander communities in the 2007 report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. For example, an Alyawerre Elder told the Board of Inquiry:

by discussing child sexual abuse in English you take it out of the hands of the people and into the white forum. By doing this the people will respond to what the white person wants rather than speaking truthfully. These types of issues need to be dealt with a bit more innovatively and intelligently utilising language. People need to feel like they own the story and then they will speak truthfully about it.²¹²

3.3.3 Recordkeeping

Many of our case studies demonstrate the risks to children that arise when institutions do not document complaints or record the outcome of an investigation into a complaint. Institutions that do not record complaints of child sexual abuse cannot identify patterns of behaviour and associated risks.²¹³ We discuss the importance of good records and recordkeeping practices in more depth in Volume 8, *Recordkeeping and information sharing*.

We heard in one case study about an institution that did not record information relevant to the complaint,²¹⁴ while in other case studies, we examined institutions that had deficient systems to record complaints.²¹⁵ We heard evidence that one institution could not locate any reports of an investigation that included rumours of child sexual abuse.²¹⁶ Another institution could not produce to the Royal Commission any document recording a particular complaint.²¹⁷ We heard evidence that some institutions did not maintain any records of complaints,²¹⁸ and one institution did not have written records of accumulated allegations of one person's repeated offending conduct.²¹⁹ In another instance, we were told by a person who conducted interviews with alleged perpetrators within an institution that it was his usual practice not to take notes during or after an interview.²²⁰ We found that as a result of this practice, written records that might otherwise have been available for use in a subsequent investigation, prosecution or other penal process were not available.²²¹

In *Case Study 1: The response of institutions to the conduct of Steven Larkins* we heard about Scouts Leader Steven Larkins who was stood down in 1994 after it was reported he slept in a tent with a young boy while on a Scout activity.²²² Larkins immediately joined another Scout troop as Assistant Scout Leader. The Group Leader of the new Scout troop was not aware of the detail of the complaint, but said the complaints against Larkins were not seen as serious because Larkins did not have his Scout warrant card taken away.²²³

In 1997, Larkins received an official warning and was again stood down following a complaint that he was buying sweets for children and asking them to join the Scouts. The official warning was not recorded on Larkins's member report. Rather, we heard evidence that it was believed to have been placed in a paper file to which fewer people had access.²²⁴ We found that the official warning against Larkins was not effectively recorded or communicated to those who were responsible for appointing and supervising leaders in Scouts Australia NSW.²²⁵

In the *Perth independent school* case study, we heard evidence that between 1999 and 2005 several teachers and a parent made complaints about the inappropriate nature of contact between an offending teacher and students at the school.²²⁶ Repeated and similar complaints were not adequately documented. Between 1999 and 2009, the school's system to record complaints or concerns about inappropriate behaviour by staff members was deficient, to the extent that:²²⁷

- no centralised database existed to record concerns or complaints or to facilitate a comprehensive review of the file when a complaint was made²²⁸
- two personnel files existed for the offending teacher – one in the preparatory school and one in the senior school – neither of which required reference to the other.²²⁹

In the *Perth independent school* public hearing, Professor Smallbone concluded that these deficiencies amounted to a serious failure by the school to connect pieces of information about the offending teacher's behaviour and to respond appropriately to concerns about his behaviour.²³⁰ This left boys at the school at risk of further sexual abuse.

In some cases, recordkeeping practices were used in a way that protected alleged perpetrators and the institution, including protecting the alleged perpetrator from criminal proceedings.²³¹ This was seen in *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese (Catholic Diocese of Wollongong)*.²³² In 1993, John Gerard Nestor, a priest in the Catholic Diocese of Wollongong, was interviewed by Father Brian Lucas, a legally trained senior priest in the Australian Catholic Church, about his conduct during church camps he ran for children in the diocese. The interview was not documented. Father Lucas told us that, in keeping with his usual practice, he did not take notes during or after this interview. We found that an outcome of this practice was to ensure that there was no written record of any admissions of criminal conduct in order to protect the priest or religious concerned and the Church.²³³

In 1996, Nestor was convicted, but later acquitted, of aggravated indecent assault and an aggravated act of indecency on a person under the age of 16. He continued to be the subject of complaints within the diocese. Over the next 11 years, the Catholic Church considered whether Nestor should be allowed to function publicly as a priest or be dismissed.²³⁴ In 1998, a formal decree was made by the Bishop of Wollongong that Nestor not exercise public ministry.²³⁵ Ultimately, Pope Benedict XVI dismissed Nestor from the priesthood in October 2008.²³⁶

Not all institutions are resourced or trained to document complaints of child sexual abuse. The Aboriginal Child, Family and Community Care State Secretariat (NSW) (AbSec) submitted that 'Improved data systems are required to collate and effectively utilise data arising from complaints processes to further refine policy and practice'.²³⁷ Some organisations may not be well resourced to appropriately document and record the complaint, and their staff may need supervision and support to document properly.

3.3.4 Education and training

In our case studies, community consultations and the submissions we received, we heard of a diverse spectrum of education and training in complaint handling being offered to staff, executives and investigators. In some instances there was a complete absence of education and training in complaints management.²³⁸

In our case studies, we considered examples of institutions with inadequate or non-existent education and training on complaint handling.

In *Case Study 26: The response of the Sisters of Mercy, the Catholic Diocese of Rockhampton and the Queensland Government to allegations of child sexual abuse at St Joseph's Orphanage, Neerkol (St Joseph's Orphanage, Neerkol)* we found that between 1993 and 1996, four former residents of the orphanage brought their experiences of child sexual abuse directly to the attention of the Bishop of Rockhampton, Bishop Brian Heenan, and Sister Berneice Loch, the Congregational Leader of the Sisters of Mercy.²³⁹ Additionally, in 1993, AYB, who had not resided at the orphanage but had been sexually abused by Father Reginald Durham, complained to Bishop Heenan. Sister Loch and the Sisters were not made aware of the abuse that AYB had suffered, until sometime after September 1996.²⁴⁰

Before mid-to-late 1996, Bishop Heenan, as the Bishop of Rockhampton, and Sister Loch, as the Congregational Leader of the Sisters of Mercy, received little or no training in understanding child sexual abuse and responding to complaints of child sexual abuse.²⁴¹ By mid-1996, Sister Loch sought out information on how the Sisters and the Diocese could be more proactive with respect to complaints regarding child sexual abuse at the orphanage. Sister Loch agreed her lack of training adversely affected her capacity to respond to the allegations of child sexual abuse by former residents of the orphanage.²⁴² We were satisfied that Bishop Heenan's and Sister Loch's lack of training in detecting and responding to child sexual abuse undermined their capacity to deal effectively with complaints of sexual abuse by former residents of the orphanage from 1993 until mid-to-late 1996.²⁴³

Inadequate education and training for staff involved in complaints management was also examined during the *Australian Defence Force* case study. For example, we examined the institutional response of the AAFC to complaints of sexual relationships between an adult instructor, Mr Christopher Adams, and two female cadets, CJG and CJE, between 2012 and 2013.²⁴⁴ The AAFC appointed an inexperienced and untrained officer as the initial assessment officer tasked with undertaking an initial assessment of the complaint and producing an initial assessment report.²⁴⁵ The purpose of an initial assessment is to gather relevant information regarding the nature and seriousness of the complaint. The resulting initial assessment report sets out options for resolutions of the complaint and allows the Complaint Manager to decide what further action is required, if any.²⁴⁶ Mr Darren Banfield, the Southern Region Executive Officer at the AAFC, conceded that in hindsight it was not acceptable that a person without training or experience be given such a serious matter.²⁴⁷

During our stakeholder consultations, and in submissions received in response to our consultation paper concerning complaint handling, we heard of the need for targeted education and training on the following complaints topics:²⁴⁸

- how staff should receive disclosures
- institutions' internal complaint handling policies and procedures
- reporting procedures and obligations to external oversight and law enforcement agencies.

Our case studies and the submissions we received in response to our consultation paper also identified the need to have better induction and training for all staff and volunteers on complaint handling and response. We heard of the tension between the desire that all staff and volunteers receive education and training on complaint handling, and the realities of resource implications. For example, the Victorian Government stated, in favour of universal education and training for staff:

As identified in the consultation papers, it is extremely important to ensure that staff, volunteers and members of governing bodies are trained appropriately in relation to responding to disclosures or allegations of child sexual abuse.²⁴⁹

In contrast, Barnardos, a not-for-profit organisation, noted the resource implications of implementing staff-wide training:

We believe that there is a high awareness of the possibility of sexual assault amongst our workforce ... However, additional training on processes for an occasional event, such as an allegation of sexual abuse, presents a considerable dilemma for our agency. We have approximately two hundred out-of-home care workers (many part-time) and many may never receive an allegation of sexual abuse. It is expensive to send these workers to training particularly as processes for managing the allegation are easily forgotten and the training would need to be repeated regularly.²⁵⁰

One factor contributing to some institutions' mishandling of child sexual abuse complaints is inadequate access to external advice and support about how best to respond to a complaint. Institutions particularly likely to require external advice and support are those that:

- are small or under-resourced
- operate in new and emerging sectors
- do not have the support of a peak body
- have little or no experience with handling complaints of child sexual abuse.

3.3.5 Support and advice

We heard of many institutions that had not provided adequate support for victims or others affected by a complaint of child sexual abuse. Support could include enabling communication of complaints, expressions of concern for the complainant by institutions, offers of counselling and referrals to other support networks, and offers of support for secondary victims, such as parents and affected communities.

Not providing support to communicate a complaint

In our case studies, private sessions and consultations we heard about the negative consequences of institutions not recognising complaints and concerns. One of the most significant impacts of this can be that if a child's distress is not correctly interpreted as communication of a complaint, they may remain at risk of further sexual abuse.

In Case Study 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School (St Ann's Special School) the verbal communications and non-verbal behaviour of children and young people with disability were not recognised by parents and adults at the institution as distress arising from the sexual abuse these children were experiencing. As a result, these children continued to be transported by the bus driver who was sexually abusing them. Parents at the school felt that if they had been supported and told about earlier allegations, they could have understood their child's behaviour at the time as a sign of distress.²⁵¹ This case study highlights the need for institutions – and particularly institutions working with children with disability – to have strong complaint handling safeguards in place that include provision of communication aids, to offset the communication challenges that many children, including children with disability, can face.

In Case Study 41: Institutional responses to allegations of the sexual abuse of children with disability (Disability service providers), we heard about an institution that did not adequately help victims of child sexual abuse to voice their complaints.²⁵² For example, CIK gave evidence about her daughter, CIJ, who requires high-level special needs assistance and attended a respite home run by FSG Australia (FSG). CIJ has low muscle tone, violent seizures and little capacity for speech.²⁵³ On one occasion, CIJ came home from respite care and brought her lips close to her mother's and moved her face back and forth in front of her mother's in a 'slow, sincere and considered manner'.²⁵⁴ CIK thought that someone had kissed CIJ on the mouth and asked CIJ if someone had kissed her. While CIJ made some responses to CIK's questions, CIK was not confident in her understanding of what CIJ was saying and found the entire situation overwhelming and confusing.²⁵⁵ On a second occasion, CIJ returned home from school incredibly distressed.²⁵⁶ While CIK was attempting to calm her daughter, CIJ lay back on the bed, raised her genitals, craned her head forward, stuck out her tongue and cried. CIK 'had no doubt' that her daughter was trying to tell her that somebody had introduced her to unwelcome oral sex.²⁵⁷

CIK contacted FSG about what may have happened to her daughter. During a meeting with FSG, CIK believed that the staff present did not accept the possibility that CIJ had been sexually abused by a member of staff of FSG.²⁵⁸ FSG staff suggested that CIJ may have been repeating something she had seen on television or may have been sexually abused by another child at the respite home.²⁵⁹ In the process of FSG conducting their investigation of the incident, CIK felt disappointed that FSG had only considered the possibility of inappropriate behaviour by other children and not the possibility of such behaviour by staff.²⁶⁰

In private sessions, we heard of similar experiences and were told that some institutions tried to diminish the significance of incidents of child sexual abuse that involved a child with disability or failed to provide the necessary counselling and assistance for the child with disability.²⁶¹ We were told that the parents of the child with disability subsequently became burdened with seeking resolution with external authorities.²⁶²

Problems with complaint handling can also arise when institutions do not provide appropriate language and cultural supports when receiving a complaint. For example, institutions may need to provide access to a skilled language and/or cultural interpreter to assist Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds to communicate a complaint.

In public consultations with multicultural communities, we heard how institutions might need to issue additional assurances of confidentiality when using interpreters from within a small community of language speakers.²⁶³ Confidentiality of disclosures and complaints should also be considered for Aboriginal and Torres Strait Islander victims. This is particularly important in small and remote Aboriginal and Torres Strait Islander communities, and in other remote communities, where perpetrators, victims and their respective families often continue to live within the same community after the abuse.²⁶⁴

Institutions may need to access appropriate cultural advice to fully understand a complaint. We heard through multicultural forums how words to describe sexual abuse could differ across cultural contexts and that direct language translation could obscure, or not fully convey, meaning.²⁶⁵ Without expert advice and assistance, the full nature of a complaint might not be understood.

We also heard that institutions may not provide children – in particular Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds – with adequate and culturally tailored sex education.²⁶⁶ Such a deficiency in education renders these children less able to recognise and disclose child sexual abuse when it occurs. The provision of appropriate and culturally tailored education is therefore a critical support to enable complaints.

No support for victims or others affected by a complaint

A lack of support for victims and others affected by a complaint was a theme that emerged in our case studies.²⁶⁷

In *Case Study 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse (Australian Christian Churches)*, we were told that ALA was sexually abused by a youth pastor, Jonathan Baldwin, at the Sunshine Coast branch of Australian Christian Churches, between 2004 and 2007.²⁶⁸ In 2007, Baldwin was charged with 47 sexual abuse offences and in 2009 he was convicted of 10 counts of child sexual abuse. Australian Christian Churches did not contact ALA or his family to provide counselling or pastoral support until 2012, even though ALA's parents had contacted the institution years earlier asking for help.²⁶⁹

In the *Disability service providers* case study we found that the disability service provider FSG Australia 'offered no meaningful support' to the Welch family after Ms Maree Welch made a complaint that her daughter Bobbie had been sexually abused.²⁷⁰ Ms Welch believes that her daughter was sexually abused on 10 April 1995 by FSG carer Mr John O'Connor. Ms Welch told us that FSG's response to her complaint had devastated her family.²⁷¹

In the *St Ann's Special School* case study, we heard evidence that there had been no support or information provided to parents by the St Ann's school after allegations of sexual misconduct were made against Mr Brian Perkins, a school bus driver. Mr Allan Dooley, a former director of the Catholic Education Office, gave evidence that he had been contacted by a parent at the school about allegations of child sexual abuse by Mr Perkins, and the lack of information that had been disclosed to other parents by the school.²⁷² The parent told Mr Dooley that it seemed that some parents had been told about Mr Perkins, while others had not been told.²⁷³ Parents did not know whether or not Mr Perkins had sexually abused their children and neither they nor their children had received counselling.²⁷⁴

Similarly, in *Case Study 45: Problematic and harmful sexual behaviours of children in schools (Harmful sexual behaviours of children in schools)*, we found that after parents were notified of the sexual assault of their child, they were not provided with sufficient support by the staff at Shalom Christian College at Townsville.²⁷⁵

In private sessions, we were told that some victims received little or no support from institutions following a complaint and were not offered counselling or other support.²⁷⁶ Some victims said they were made to repeat their allegations in front of the subject of a complaint.²⁷⁷ Institutions not supporting child complainants where the child had a reputation for bad behaviour, was a recurring theme in our case studies and private sessions.²⁷⁸

We also heard of instances in private sessions where institutions did not provide support to secondary victims. For example, during one private session, 'Burke' – who told us that his brother had been sexually abused as a child by a priest in the Australian Catholic Church – expressed his disappointment about the lack of support offered by the Catholic Church to him and his family.²⁷⁹

The wall of silence has destroyed any sense I had of the Church as a caring and loving organisation. We, as secondary victims, were not at any time, before or after my brother's death, offered any support, assistance, counselling or pastoral support by the Church. We, our family, believe the Church leaders pretend to care about victims, but really don't care at all. We have lost all faith in the leadership of our Church.²⁸⁰

Volume 3, *Impacts* discusses in greater detail the effect of child sexual abuse on secondary victims.

In Section 3.5, 'Child-focused complaint policies and procedures', we outline the nature of support and assistance for victims and those affected by a complaint that should be factored in by institutions when designing and resourcing the complaints management process. Volume 9, *Advocacy, support and therapeutic treatment services* also contains more detailed information on this topic.

3.3.6 Investigation standards

Our case studies revealed numerous instances where institutions engaged in poor investigation standards in relation to child sexual abuse matters. Some institutions did not engage professional and impartial investigators to handle allegations of child sexual abuse. In some cases where professional investigators were engaged, they were not correctly advised by the institution, or else the investigators did not provide the correct advice to the institution. Some institutions did not comply with investigative procedures in accordance with the principles of procedural fairness, which is discussed further in Section 3.5.3 'Investigating a complaint'. In other instances, we heard that some institutions did not communicate the investigative processes, updates and outcomes transparently to those affected. This is further discussed in Section 3.3.8 'Communication with affected parties'. We also heard that the paucity of investigators' skills and poor-quality investigation standards compromised investigations.

Not using an impartial investigator

In some cases, the person appointed to investigate a complaint was not impartial. For example, in the *Australian Christian Churches* case study, we heard evidence that, in 1999 and 2000, Pastor Brian Houston of the Assemblies of God did not refer allegations of child sexual abuse against Mr Frank Houston to the police.²⁸¹ A conflict of interest arose because Pastor Brian Houston, as National President of the Assemblies of God in Australia and a Senior Pastor, directly confronted his father, Mr Houston, about the allegations. Given such a situation, regardless of whether Pastor Houston's actions would have been appropriate when applied to a different complaint, because of his personal relationship with the subject of this complaint a public perception of a potential conflict of interest remained.²⁸²

Investigations that are not commensurate to the complaint

Complaints of child sexual abuse were not always investigated to a level commensurate to the allegation. For example, in our *Disability service providers* case study we considered the response of FSG to two separate allegations of child sexual abuse.²⁸³ One allegation was from Ms Maree Welch, who, as mentioned above, believed that her daughter Bobbie was sexually abused on 10 April 1995 by FSG carer Mr John O'Connor. Contrary to submissions made on behalf of FSG, we were satisfied that Ms Welch conveyed to FSG in 1995 a complaint of sufficient seriousness to be investigated.²⁸⁴ However, we found that, 'other than interviewing Mr O'Connor on one occasion in April 1995, FSG did not investigate the allegations of sexual abuse made against him by Ms Welch'.²⁸⁵

Not using an investigator with sufficient skill, expertise or experience

Our case studies demonstrated that institutions have sometimes relied upon staff to investigate complaints of child sexual abuse when it was evident that they did not have the appropriate knowledge, skills or experience.²⁸⁶ Investigators sometimes gave and/or received incorrect or inadequate advice in relation to complaints. The result, on occasion, was an inadequate investigation or no investigation into allegations of child sexual abuse.

An example of inadequate investigation skills, expertise and experience is demonstrated in the *St Joseph's Orphanage, Neerkol* case study.²⁸⁷ This case study, briefly discussed earlier in this chapter, examined the sexual abuse of children who were residents at St Joseph's Orphanage, which was operated by the Sisters of Mercy. Between 1993 and 1996, some former residents of the orphanage made complaints to Bishop Heenan, the head of the Catholic Diocese of Rockhampton, and Sister Loch, the Congregational Leader of the Sisters of Mercy, of child sexual abuse by workers, priests and nuns at the orphanage.²⁸⁸

Sister Loch, in a public statement, described several of the complaints as 'unsubstantiated' and as having been 'investigated to the best of our ability'.²⁸⁹ Bishop Heenan gave evidence that he was under the misapprehension that no further action against one of the perpetrators was required, because of factors such as the perpetrator's advanced age, and the fact that the orphanage no longer housed children.²⁹⁰ We found that Bishop Heenan's and Sister Loch's lack of training in detecting and responding to child sexual abuse undermined their capacity to deal effectively with complaints of sexual abuse by former residents of the orphanage.²⁹¹

In the *Australian Defence Force* case study we considered that the manner in which the AAFC conducted an initial assessment of a complaint of child sexual abuse was deficient in several respects. The seriousness of the allegations required the appointment of an experienced investigator, yet the initial assessment of the complaint was undertaken by a person with no experience or training in conducting such assessments or in dealing with an allegation of an inappropriate relationship between a cadet and an instructor.²⁹²

3.3.7 Responses to children with harmful sexual behaviours

In Section 3.2, ‘Understanding complaint handling’, we noted one type of complaint that institutions receive involves a child exhibiting harmful sexual behaviours. Of survivors who spoke to us in private sessions, 67.3 per cent provided information on the age of the person who sexually abused them. Of these, 24.4 per cent said that they were sexually abused by another child.

We heard that institutions often responded inadequately to this type of abuse. Poor institutional responses in handling children with harmful sexual behaviours that we identified from our *Harmful sexual behaviours of children in schools* case study included:

- not identifying the harmful sexual behaviours²⁹³
- minimising the significance of children’s harmful sexual behaviours and not recognising them as serious matters requiring action²⁹⁴
- inadequate institutional policies and procedures for handling complaints about children engaging in harmful sexual behaviours²⁹⁵
- not communicating with affected parties, including parents or carers of the child engaging in the harmful sexual behaviours and parents or carers of the child victim(s)²⁹⁶
- responding to the harmful sexual behaviours by excluding the victim(s) from the institution.²⁹⁷

We heard numerous examples of deficiencies in institutional responses to complaints concerning children with problematic or harmful sexual behaviours in our private sessions.²⁹⁸ A number of private sessions attendees told us that staff within institutions did not know what to do when a disclosure or complaint was made about a child sexually abusing another child.

In one private session, ‘Elise’ told us her daughter ‘Katie’ disclosed she had been sexually abused by ‘Mia’, one of her best friends at school. The same day the abuse occurred, ‘Katie’ told her teacher, who made a mandatory report to the NSW Department of Family and the Community Services. When ‘Elise’ followed it up with the school principal a few days later, ‘Elise’ told us the principal:

was quite perplexed as to – well, her exact words were, ‘I’m waiting for the CEO of the Catholic Education Office to call me. I’m not entirely sure what to do’, which really doesn’t give you a lot of confidence on this end of the table.²⁹⁹

‘Elise’ was concerned for both girls but told us that no leadership was shown by the school in addressing the issues, and that ‘Mia’s’ family began to intimidate ‘Katie’, the school staff, the school principal and other parents. ‘Elise’ said, ‘as soon as we walked out of that school – you could hear the sigh of relief’.³⁰⁰

Institutions also often did not recognise the behaviours exhibited as problematic and sexually harmful. In one private session we heard about a female survivor with an intellectual impairment who said she was sexually abused by a boy in her class.³⁰¹ We were told the survivor disclosed the abuse to her mother, who told the school's head of special education. The mother said the head of special education did not take her complaint seriously, and instead made excuses for the boy's behaviour.

For further information about the nature and cause of harmful sexual behaviours exhibited by children, refer to Volume 2, *Nature and cause*. Volume 10, *Children with harmful sexual behaviours* provides a detailed discussion of institutional responses to children with harmful sexual behaviours, and gives our recommendations about interventions to improve the response to children with harmful sexual behaviours.

3.3.8 Communication with affected parties

A complaint of institutional child sexual abuse will be of interest and concern to many people associated with the institution (referred to in this section as 'affected parties'). In our public hearings and private sessions, we heard that some institutions did not communicate effectively with those who were affected by instances of child sexual abuse.

Not communicating effectively with the victim

Survivors and their families told us of instances where the institution that handled their complaint of child sexual abuse did not communicate with them effectively or appropriately about the progress or outcome of the complaint.³⁰²

An example of inappropriate communication with a survivor is demonstrated in our *Australian Christian Churches* case study, which examined the response of the Assemblies of God in Australia to a complaint of child sexual abuse made by AHA against Mr Frank Houston.³⁰³ In about October 1999, the National Executive of the Assemblies of God in Australia learned about AHA's allegations of child sexual abuse against Mr Frank Houston, which was alleged to have occurred in 1970.³⁰⁴ The complaints procedure of the Assemblies of God in Australia required the National Executive to appoint an independent person to contact AHA.³⁰⁵ No such person was appointed.³⁰⁶ Instead, the National Executive agreed that Mr Frank Houston's son, Pastor Brian Houston, would communicate their decisions to AHA.³⁰⁷ This meant that Pastor Brian Houston was the National Executive's only line of communication to both the perpetrator and the victim.³⁰⁸ We concluded that in handling AHA's allegations of child sexual abuse against Mr Frank Houston, the National Executive did not follow its complaints procedure by failing to, among other things, appoint an independent contact person for AHA.³⁰⁹

In other instances, survivors and their families told us they never learned of the action an institution took or, indeed, if it took any action at all. Some told us that the subject of a complaint was moved from the institution without any explanation to the victim or victim's family.³¹⁰ Survivors and their families said they were left wondering whether the subject of a complaint was working with children in another setting. They told us they did not know whether the police or child protection services had been notified, or whether any action was taken against the subject of a complaint.³¹¹

In one private session, 'Carole Jane' told us she was sexually abused by her primary school teacher for a period of one year on an almost daily basis.³¹² She said the abuse occurred in the 1960s, when 'Carole Jane' was aged 11. The teacher would call her to the front of the class. 'Carole Jane' said that while she stood by his desk, he would put his hand up her skirt and into her underpants. She said that after about a year, she told her mother who, she thinks, made a complaint about the abuse to the principal. The teacher disappeared from the school shortly afterwards, but 'Carole Jane' said the school never told her what action had been taken against him. At the time of her private session, 'Carole Jane' said she still did not know whether he was moved to another school and continued abusing children. She stated, 'I don't know the truth of it, which has sort of worried me in years past'.³¹³

Commissioned research highlights the importance of open communication with victims and survivors who disclose child sexual abuse to an institution. In-depth interviews with survivors undertaken for this research suggested that institutions were often silent when requests for information were made by survivors following a disclosure, and that some institutions requested that the survivor be silent about the complaint.³¹⁴ The research cited numerous experiences where survivors described difficulties associated with 'keeping silent' and 'the secrecy imposed by the institution and their community'.³¹⁵ These survivors asked that institutional silence and secrecy be replaced with open discussion.³¹⁶

Not communicating effectively with other affected parties

In our case studies, private sessions and research we heard that some institutions did not inform parents, guardians and carers of child victims about complaints and the complaint handling process.³¹⁷ Research tells us that institutions often do not communicate and share important information regarding complaints and complaint handling with staff and other affected parties.³¹⁸ A lack of communication with other affected parties where the subject of the complaint is or has recently been working or volunteering at the institution may reduce opportunities for additional complaints of child sexual abuse to be made; for example, where other child victims may disclose sexual abuse after receiving information about the original complaint.

Case Study 10: The Salvation Army's handling of claims of child sexual abuse 1989 to 2014 provides an example of an institution that did not keep parents informed about the handling of a complaint.³¹⁹ This case study dealt with the sexual abuse of an eight-year-old girl by Captain Colin Haggar of The Salvation Army.³²⁰ The girl's parents complained to the divisional office of The Salvation Army and met with representatives of that office about their complaint. The girl's mother told us that, following this initial meeting, The Salvation Army did not follow up with her or her family.³²¹ The Salvation Army did not formally notify the girl's family of the steps taken to discipline Captain Haggar.³²²

In our *YMCA NSW* case study, we found that when YMCA NSW was made aware of the allegations that Jonathan Lord had sexually abused children, it was appropriate that they sought advice from the New South Wales Police Force and the Joint Investigation Response Team about what they could and could not communicate to staff and parents.³²³ However, we found that YMCA NSW did not ensure that staff were kept informed and supported following the allegations.³²⁴

Delays and misinformation characterised the manner in which YMCA NSW management communicated with parents.³²⁵ Although YMCA NSW was aware on 30 September 2011 of the allegations against Lord, it did not notify parents of these allegations until 13 October 2011.³²⁶ There was evidence that YMCA NSW unnecessarily withheld information from parents, even though sharing information would not have prejudiced the criminal investigation.³²⁷ Further, some of the information the YMCA NSW gave parents in letters and at information sessions was contrary to the evidence and, therefore, misleading and inaccurate.³²⁸ Our finding was that YMCA NSW management failed to provide frank, practical and timely information to parents.³²⁹ In particular, we found that YMCA NSW did not:³³⁰

- promptly provide key information to parents
- address why Lord had been able to offend, or how the institution would identify and address internal failures to become a safer organisation for their children
- promptly equip parents with the tools to discuss safety issues with their children, in case other children had been sexually abused or needed support.

In some circumstances, an institution has a responsibility not only to communicate with parents and staff, but also with a wider community about a complaint and how it is handled. In the *Catholic Diocese of Wollongong* case study, Bishop Peter Ingham communicated the result of the Catholic Church's disciplinary proceedings against John Gerard Nestor to the affected parties, including complainants.³³¹ We found, however, that in order to promote the safety of children, Bishop Ingham should have made it known publicly that Nestor had been dismissed from the priesthood because of the findings of child sexual abuse and other inappropriate conduct.³³²

In *Case Study 37: The response of the Australian Institute of Music and RG Dance to allegations of child sexual abuse* we accepted the submissions from parents of students at RG Dance that they were given insufficient information at a parent meeting concerning the allegations against RG Dance teacher, Grant Davies.³³³

This issue of sharing information with affected parties has also been considered by other recent Australian inquiries. For example, the South Australian Independent Education Inquiry, which reported in 2013, considered the circumstances surrounding the arrest and later conviction of an employee of an out-of-school-hours care service at a metropolitan school in South Australia. The institution in question did not inform parents with children in the school in a timely manner that the employee had been convicted of sexual assault committed against a child in his care.³³⁴

The inquiry recommended that the South Australian Department of Education ‘establish a policy to inform a school community at the appropriate time whenever allegations of sexual misconduct are made against any person employed in any capacity at that school and those allegations raise concerns as to the suitability of that person to work with children’.³³⁵

Commissioned research shows that employees and institutions can be concerned about sharing information on complaints and allegations of child sexual abuse for a range of reasons. Most often, they have professional concerns about breaking client confidentiality, they want to work within the ‘cultural norms’ of the organisation (which may preclude transparency), and they lack confidence in the supporting legislation and information systems.³³⁶

Information exchange between institutions and law enforcement agencies about complaints and allegations of child sexual abuse is discussed in Volume 8, *Recordkeeping and information sharing* and our *Criminal justice* report.

3.3.9 Risk assessment and ongoing review

In our case studies and private sessions we heard that some institutions, when receiving complaints, did not take steps to assess and manage risks to the safety of children in their care.³³⁷ We also heard of cases where institutions did not share information about the risk posed by a staff member who was the subject of a complaint of child sexual abuse with other institutions to which the subject of the complaint was moving.³³⁸

Continued access to children within the institution

Some institutions did not adequately manage risk because they allowed the subject of the complaint to continue to have access to children within that institution.³³⁹ For instance, in *Case Study 6: The response of a primary school and the Toowoomba Catholic Education Office to the conduct of Gerard Byrnes*, we found that the school principal, Mr Terence Hayes, sought and enabled the re-appointment of the subject of the complaint, Gerard Byrnes, as a relief teacher, despite knowing that a complaint of child sexual abuse had been made against him.³⁴⁰ During the period that Byrnes was a relief teacher, he committed three of the 33 counts of indecent treatment for which he was ultimately convicted.³⁴¹

In Case Study 15: *Response of swimming institutions, the Queensland and NSW Offices of the DPP and the Queensland Commission for Children and Young People and Child Guardian to allegations of child sexual abuse by swimming coaches*, the subject of the complaint, swimming coach Mr Scott Volkers, was charged with child sexual abuse offences.³⁴² The NSW Office of the Director of Public Prosecutions subsequently determined it would not proceed with the prosecution.³⁴³

On the same day that these charges were discontinued, the Queensland Academy of Sport re-instated Mr Volkers to the position of Head Swimming Coach, without having conducted any investigation of its own into the child sexual abuse complaints that had been made against him.³⁴⁴ The Royal Commission considered that the academy did not have sufficient information to form the view that it was safe to reinstate Mr Volkers to full duties. In our view:

An organisation in the position of the academy should err on the side of caution before reinstating a person who is the subject of serious allegations of child sexual abuse to a role that entails any contact with children. At the very least, the academy should have conducted a detailed investigation of the nature of the alleged offences and the reasons for the discontinuance of the prosecution. Only then would it be armed with sufficient information to make an informed assessment about the level of risk posed by Mr Volkers and it should have kept Mr Volkers on restricted duties until it had that information.³⁴⁵

Case Study 27: The response of health care service providers and regulators in New South Wales and Victoria to allegations of child sexual abuse provided an example of an institution not considering the possibility that there were other victims at the institution, and not preventing the alleged perpetrator having access to children.³⁴⁶ In this case study, AWI gave evidence that she was sexually abused at the Royal Children's Hospital, Melbourne, when she was 12 years old in 1981.³⁴⁷ AWI alleged that the abuse was perpetrated by two volunteers at the hospital.³⁴⁸

AWI made a complaint about the alleged sexual abuse in 1997 to Dr John de Campo, the then CEO of the Women's and Children's Health Care Network, which incorporated the Royal Children's Hospital, Melbourne.³⁴⁹ In the email in which AWI set out her complaint, she requested an investigation to find out whether one of the alleged perpetrators, whom she referred to as 'Harry', was still working with children.³⁵⁰ She also set out her suspicion that there was at least one other female victim.³⁵¹ AWI provided sufficient information to identify the alleged perpetrator was Mr Harry Pueschel, a current volunteer at the hospital.³⁵²

In January 1998, Dr de Campo wrote a letter to Mr Pueschel terminating his services as a volunteer.³⁵³ No reference was made to the allegations of child sexual abuse.³⁵⁴ However, by July 1999, the alleged perpetrator had regained access to the ward area of the Royal Children's Hospital. We found that there was no adequate system in place to prevent the access.³⁵⁵

Dr de Campo gave evidence that he was uncertain about whether he had made any searches or investigations to find out whether there were any other children who may have made a complaint of child sexual abuse by the alleged perpetrator during the 1980s.³⁵⁶ The Royal Commission was satisfied that no internal investigation was undertaken by the Royal Children's Hospital, Melbourne into AWI's allegations of child sexual abuse which occurred in the early 1980s.³⁵⁷ In a report dated 24 December 1997, Victoria Police noted that 'given that [Mr Pueschel] has been at the hospital for many years the potential for numerous victims is high'.³⁵⁸

Ongoing risk might also be posed in a situation where harmful sexual behaviours exhibited by children are not responded to appropriately. We were told in a private session of how 'Danny', who had an intellectual disability, had been sexually abused at his school by another student.³⁵⁹ We were told that after a complaint of the harmful sexual behaviour had been made to the principal by 'Danny's' brother, it was revealed that other complaints of child sexual abuse had been made against the student. Volume 10, *Children with harmful sexual behaviours* discusses issues around understanding, reacting and responding to harmful sexual behaviours exhibited by children, including particular issues for children with disability.

Continued access to children in other institutions

Some institutions also responded to complaints of child sexual abuse by taking steps likely to have enabled the subject of a complaint to have continued access to children at other institutions.³⁶⁰ We heard in many of our case studies about situations where institutions showed a disregard for other potential victims.

For example, in the *Knox Grammar School* case study, the Royal Commission was satisfied that Dr Ian Paterson, then headmaster of Knox, 'gave misleading employment references for staff' who had been the subject of complaints.³⁶¹ This included a reference for Roger James, a teacher at the school when he left Knox Grammar School in 1977 for another school in New Zealand.³⁶² The reference suggested that James was a person who was suitable to be involved in running school camps despite Dr Paterson prohibiting James from involvement with school camps while at Knox, because of concerns about his behaviour with male students.³⁶³ In his evidence, Dr Paterson accepted that, when he wrote the reference for James, he did not consider the welfare of students who might fall under James's care at the New Zealand school. Dr Paterson accepted that he should have given consideration to that matter.³⁶⁴

Similarly, we found in the *Brisbane Grammar School and St Paul's School* case study that Mr Gilbert Case, Principal of St Paul's School, wrote a reference for Gregory Robert Knight, a teacher at the school, which omitted critical information about Knight's misconduct while he was employed at the school. We found that 'Mr Case's action in writing the reference was in total and utter disregard for the welfare of children at any school at which Knight may have come to be employed'.³⁶⁵ Mr Case's actions put other children associated with Knight's future employment at risk.

We also heard of situations where the institution transferred risk by moving the perpetrator to another location or assigned them other duties without reporting to relevant authorities.³⁶⁶ Our case studies showed that some institutions, particularly religious institutions, moved staff who were the subject of a complaint of child sexual abuse to different locations, while allowing them to have continued contact with children.³⁶⁷

We also heard during many of our private sessions that a common motivation for victims and survivors to disclose and make a complaint was the knowledge and fear that there were other victims.³⁶⁸ Victims and survivors often disclosed because they did not want the sexual abuse that happened to them to happen to other children, in that institution or other institutions.³⁶⁹

No continuous improvement and review

In our case studies, we heard about institutions that did not conduct reviews that would have enabled them to consider systemic improvements to the institution's policies and processes to better protect children in the future.³⁷⁰

In the *YMCA NSW* case study, we found that YMCA NSW neither analysed, either internally or with external help, how Jonathan Lord was recruited and supervised, nor how he engaged in the offending behaviour while working for YMCA NSW for two years.³⁷¹

On learning of the allegations of child sexual abuse against Lord, YMCA NSW senior managers should have reviewed and analysed the events leading to Lord's recruitment, induction, training and supervision.³⁷² The Royal Commission found that key systemic deficits at YMCA Caringbah included:

- no effective system for ensuring that staff and parents were aware of and understood its child protection policies³⁷³
- failure to comply with the YMCA Safeguarding Children Policy 2006 relating to the formal induction of its outside school hours care staff³⁷⁴
- staff breaching YMCA policies and not complying with minimum staff to child ratios at all times³⁷⁵
- YMCA NSW failing to follow its own recruitment and screening procedures in recruiting Lord³⁷⁶ – if it had done so, it is likely Lord would not have been employed³⁷⁷
- no culture of vigilance and of shared personal responsibility for child safety.³⁷⁸

We further found that YMCA NSW's failure to properly analyse these systemic deficits contributed to us not having confidence in the organisation's capacity to carry out the significant reforms needed to ensure the safety of the children in its care.³⁷⁹

3.4 Improving complaint handling by being child safe

Poor institutional responses to complaints of child sexual abuse have been common and damaging to victims and survivors. They further traumatised victims and survivors who were already experiencing trauma from the original abuse. Many institutions would benefit from guidance on how to respond better to child sexual abuse complaints.

A key task has been to examine what makes institutions ‘child safe’.³⁸⁰

In Chapter 3 of Volume 6, *Making institutions child safe*, we outline the national Child Safe Standards we have identified as essential to making an institution safer for children:

- Standard 1: Child safety is embedded in institutional leadership, governance and culture
- Standard 2: Children participate in decisions affecting them and are taken seriously
- Standard 3: Families and communities are informed and involved
- Standard 4: Equity is upheld and diverse needs are taken into account
- Standard 5: People working with children are suitable and supported
- Standard 6: Processes to respond to complaints of child sexual abuse are child focused
- Standard 7: Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
- Standard 8: Physical and online environments minimise the opportunity for abuse to occur
- Standard 9: Implementation of the Child Safe Standards is continuously reviewed and improved
- Standard 10: Policies and procedures document how the institution is child safe.

Standard 6 focuses on institutional complaint handling processes. However, all the standards should inform an institution’s complaint handling process, and its policy and procedures, to create an environment where children, families and staff feel empowered to raise complaints, and where these complaints are taken seriously.

3.4.1 Leadership, governance and culture

Standard 1 of the Child Safe Standards (Standard 1: Child safety is embedded in institutional leadership, governance and culture) aims to ensure that the best interests and protection of children are paramount, and that children's rights are understood and respected. The institution creates a culture where individuals make decisions based on the primary importance of the safety and wellbeing of all children, and understand which circumstances increase the vulnerability of children in their care. The standard creates a culture in which children and adults connected to the institution are alert to the risk of child sexual abuse.

Leadership, including boards and other governing bodies, establishes appropriate standards of behaviour and creates a positive culture to receive complaints by:

- treating concerns raised by children and young people and their parents and carers seriously and acting on them³⁸¹
- not obstructing or preventing the reporting of instances of abuse³⁸²
- encouraging individuals associated with the institution to make complaints about child sexual abuse when they encounter actual abuse or concerning behaviours
- ensuring that those who make a complaint are aware they will be supported if they speak up, and will be free from bullying, harassment and other forms of retribution.

We were told that an increase in complaints about sexual abuse and other forms of abuse can be an indication that an institution and its leaders support a positive complaints culture. In its submission, the Disability Services Commissioner Victoria said:

A critical sign of culture is an overall response and encouragement of all people to speak up and raise issues, not just related to issues of abuse. This must ... be supported by boards of management and evidenced throughout the organisation in regards to capturing feedback and complaints ... An increase of complaints is more likely to be related to a positive complaints culture and people becoming more confident in raising and recording issues of dissatisfaction, rather than an increase in dissatisfaction itself.³⁸³

Formal legislative or regulatory measures, such as whistleblower legislation³⁸⁴ that may legally protect individuals who complain about suspected child sexual abuse, cannot fully address institutional cultures that victimise complainants.

3.4.2 Children's participation and empowerment

Standard 2 of the Child Safe Standards (Standard 2: Children participate in decisions affecting them and are taken seriously) aims to ensure institutions observe Article 12 of the United Nations Convention on the Rights of the Child, which details the right of children to express their views and participate in decisions that affect their lives.³⁸⁵ Children are safer when institutions acknowledge and teach children about their rights to be heard, listened to and taken seriously. Child safe institutions should work to make sure children feel confident in making complaints that may constitute or relate to child sexual abuse.

A child safe institution can empower children to raise complaints by:

- ensuring the perspective of children and their families is taken into account by the institution throughout the complaint process³⁸⁶
- encouraging children to report behaviours that make them feel uncomfortable or unsafe³⁸⁷
- having multiple pathways in the institution to enable a child to make a complaint.³⁸⁸ In addition, at least one complaints pathway could be established that is independent of and external to the institution. For example, closed institutions such as youth detention facilities and boarding schools could have an accessible phone line for children so they can call the state or territory ombudsman's office³⁸⁹
- structuring activities to create opportunities for children to talk with a trusted adult about subjects that might otherwise be difficult for them to raise³⁹⁰
- involving children in the development of the complaint handling process and its ongoing review so children can feel a sense of ownership of processes.³⁹¹

When deciding whether or not to make a complaint about sexual abuse, children may consider how an institution typically responds to concerns raised about other issues. For example, commissioned research suggests that children base their assessment of how an institution would respond to their safety concerns on how the institution has previously responded to bullying.³⁹²

In our consultations with children and young people, children told us that they had to trust staff and the institutional environment before they could feel safe to raise their concerns.³⁹³ Young people told us feeling listened to and treated with respect was an important part of establishing a relationship of trust.³⁹⁴ One student told us a relaxed environment was needed to enable difficult conversations to occur:

just having those, like, really comfortable environments where people can just hang out and talk to, like, the counsellor, or things that, like, not have it be so pressured and, like, professional, just like talking.³⁹⁵

Similarly, in our consultations with children and young people in youth detention, we were told that factors such as respect, having a 'normal' conversation with mutual and genuine interest, being treated like a person as opposed to a criminal and not being patronised were critical in establishing a relationship of trust.³⁹⁶ One young person said:

[The officers] talk to you about their life too. They let you know what's going on outside and what they've been up to and stuff like that. You can ask them questions ... They just talk to you. And that's what people really like, being able to know someone.³⁹⁷

3.4.3 Family and community involvement

Standard 3 of the Child Safe Standards (Standard 3: Families and communities are informed and involved) aims to ensure that a child safe institution observes Article 18 of the United Nations Convention on the Rights of the Child, which states that parents, guardians and carers have the primary responsibility for the upbringing and development of the child.³⁹⁸

Families and caregivers are recognised as playing an important role in monitoring children's wellbeing and helping children to disclose any complaints. Families and caregivers also play an important support and advocacy role.

Child safe institutions understand the importance of keeping parents, guardians and carers of children who are the subject of a complaint informed of the progress and actions of the complaint handling process, where appropriate.

3.4.4 Equity and diverse needs

Standard 4 of the Child Safe Standards (Standard 4: Equity is upheld and diverse needs are taken into account) aims to ensure that institutions are responsible for the safety of all children, including those with additional vulnerabilities and from diverse backgrounds. Institutions handle complaints better when they recognise, anticipate and respond to the circumstances of all individuals, including those with diverse experiences and needs, such as people with disability, people from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander peoples, or people with experiences of living in out-of-home care.

Child safe institutions should ensure responses to complaints are culturally safe, and cognitively and developmentally appropriate. This means that institutions should take steps to make sure policies and procedures are communicated in culturally safe ways, are culturally tailored,³⁹⁹ available in easy English and pictorial formats, and are provided in suitable electronic formats (both PDF and non-PDF versions).⁴⁰⁰

Child safe institutions also make complaint handling policies and procedures available in relevant community languages and provide conceptual⁴⁰¹ or verbal translation in culturally safe ways. In addition, child safe institutions make it possible for children, adult survivors and families to communicate by providing language and cultural interpreters or assisted communication tools.

3.4.5 Human resource management

Standard 5 of the Child Safe Standards (Standard 5: People working with children are suitable and supported) aims to ensure that institutions provide appropriate screening and induction for staff and volunteers; and provide frequent supervisory support so staff members can discuss their responsibility for the safety of children, and raise any concerns about the complaint process.

The institution's induction for new staff and volunteers should include information about:

- complaint handling processes including how to respond to a complaint about behaviour towards children
- reporting obligations and procedures including format, content, and destinations for reports.

Induction should be more detailed for staff working in roles and situations with high risk or with children who could be more vulnerable to maltreatment.

Ongoing supervision and people management should include:

- opportunities to formally or informally raise concerns about harm or risk of harm to children
- appropriate responses to concerns about performance in the institution's code of conduct.

The institution should also make it clear to staff that they do not have to wait until the next supervision meeting to note any concerns or complaints about child safe issues.

Recruitment processes should also be used to make sure those entering complaint managing roles have the relevant skills, experience and qualifications to manage complaints. Staff and volunteers should have training on an institution's complaint handling and response processes.

3.4.6 Child-focused complaint handling processes

Standard 6 of the Child Safe Standards (Standard 6: Processes to respond to complaints of child sexual abuse are child focused) is discussed in detail in Section 3.5, 'Child-focused complaint policies and procedures'.

3.4.7 Education and training for staff and volunteers

Standard 7 of the Child Safe Standards (Standard 7: Staff and volunteers are equipped with the knowledge, skills and awareness to keep children safe through continual education and training) aims to ensure leaders (including boards and other governing bodies), staff and volunteers have the knowledge, skills and attitudes to effectively respond to complaints of child sexual abuse within institutional contexts. This should include everyone's individual responsibility for the protection of children, appropriate knowledge on increased risk for some children and particular barriers to disclosure. This training should be trauma-informed.⁴⁰²

Child safe institutions give staff and volunteers guidance on their obligations to report complaints of child sexual abuse to external authorities, such as child protection authorities, relevant oversight agencies and police.

Staff with specific responsibility for complaint handling should receive additional training for this role. Depending on the specific role, training may address:

- the breadth of the complaint management policy and processes
- investigative skills including interviewing skills; and additional skills for working with specific groups of children, for example, Aboriginal and Torres Strait Islander children
- working with police and child protection agencies.

The mandatory Australian Government Investigation Standards⁴⁰³ set out minimum qualifications for investigators engaging in work for Australian Government agencies. Institutions may consider those standards in determining the investigation criteria they adopt.

3.4.8 Physical and online environments

Standard 8 of the Child Safe Standards (Standard 8: Physical and online environments minimise the opportunity for abuse to occur) aims to ensure institutions create a physical and online environment to help people make a complaint safely. For example, child safe institutions might have a private place available to discuss concerns or make a complaint, or they may set up an email address specifically for receiving complaints.

Certain practices in the physical and online environment can be used as evidence in the investigation of a complaint. Precautions – such as having personal log-in credentials, logging browser history and keeping records of email communications – can increase the chance of detecting inappropriate behaviours in the online environment. Physical precautions such as security cameras and swipe card access records can similarly provide evidence to substantiate a complaint.

An institution's code of conduct should set clear expectations of acceptable and unacceptable behaviour in the physical and online environments. This is aimed at eliminating unacceptable uses of the physical and online environments that might put children at greater risk of abuse. It also allows institutions to act against people who breach the code.

3.4.9 Continuous improvement and review

Standard 9 of the Child Safe Standards (Standard 9: Implementation of Child Safe Standards is continuously reviewed and improved) aims to ensure institutions establish effective links between complaint handling and the institution's quality improvement processes, so that complaints contribute to better child protection in the institution.⁴⁰⁴

Regular audits and review processes help child safe institutions monitor the efficacy of their policy and procedures when responding to complaints of child sexual abuse. An audit should include a systemic review or root cause analysis, which identifies and addresses systemic issues in complaint handling. Audits can be performed internally by the institution or externally by a specialist agency. All 10 Child Safe Standards should be considered as part of the audit review. Mechanisms to enable regular review should be established, and records kept.⁴⁰⁵

3.4.10 Policies and procedures

Standard 10 of the Child Safe Standards (Standard 10: Policies and procedures document how the institution is child safe) aims to ensure institutions have localised policies and procedures that set out how it maintains a safe environment for children.

A complaint handling policy and procedure is a component of an institution's broader child safety or child protection policies. It formally guides institutions in responding to child sexual abuse complaints. It can include a code of conduct. The policy needs to be put into practice to ensure effective complaint handling.

Complaint policies and procedures must be documented and dated. They need to be accessible⁴⁰⁶ to all children and adults, including survivors – and take into account cultural diversity, disability, and communication and support needs. They need to be intelligible to children, families, staff and volunteers. The complaint policy needs to be enforced and regularly reviewed.

As the South Australian Office of the Guardian for Children and Young People commented:

There is a world of difference between having a written complaints policy and the use of complaints mechanisms and responsiveness to complaints. There is considerable benefit to be had from the rigorous application of complaints policies, particularly in increasing their accessibility to children and young people.⁴⁰⁷

3.5 Child-focused complaint policies and procedures

Standard 6 of the Child Safe Standards (Standard 6: Processes to respond to complaints of child sexual abuse are child focused) aims to ensure institutions have in place a child-focused complaint handling system that is understood by children, staff, volunteers and families. An effective complaint handling policy and procedure should clearly outline roles and responsibilities, approaches to dealing with different types of complaints, and obligations to act and report.

The essential components that a child safe institution's complaint handling policy and procedure should cover in order to meet this standard are:

- making a complaint
- responding to a complaint
- investigating a complaint
- providing support and assistance
- achieving systemic improvements following a complaint.

Institutions that provide services for or engage with children are diverse and can vary in size, resources, workforce, location, regulatory context, and the degree of risk they pose to children. Given this variation, it is not practical for all institutions to adopt the same complaint handling policies and procedures. Instead, each institution needs to develop a policy and procedure that reflects its own circumstances. Complaint handling policies and procedures also differ according to the laws that apply in each jurisdiction with respect to reporting obligations, employment, privacy and victims' rights.

Some complaints require the use of both the institution's complaint handling policies and its child protection policies. The last stage of the complaints management process may also warrant consideration of the institution's redress policy. Any such related or applicable processes and policies should be cross-referenced in the complaint handling policy.

Policies and procedures should be accessible to all children and adults connected to an institution, who may have varying communication and support needs. Institutions should consider who needs to access the policies and procedures and how best to communicate with these stakeholders, giving consideration to specific communication needs with respect to language or culture and other communications needs, such as for those with disability. For example, the complaint handling policy may need to be available in alternative formats such as audio, plain English or pictorial formats, as well as PDF and non-PDF versions to facilitate use of screen-readers. In some contexts, the policy should also be available in Auslan (Australian Sign Language) or Braille.⁴⁰⁸

Government agencies or peak bodies could help smaller institutions by supplying complaint handling policy templates, which can then be tailored to suit the sector and/or institution involved. For more information about building the capacity of institutions to become child safe, see Chapter 4 of Volume 6, *Making institutions child safe*.

We were told by government and non-government stakeholders that institutions would welcome more assistance and guidance when developing and implementing complaint handling policies and procedures for employees and volunteers.⁴⁰⁹ Chapter 4 of Volume 6 discusses how regulatory oversight and practice could be improved to help institutions be child safe, including through the implementation of the Child Safe Standards. We also discuss how oversight of institutional complaint handling can be improved in Chapter 4, 'Oversight of institutional complaint handling', of this volume.

3.5.1 Making a complaint

An institution's complaint handling policy and procedure should explain how a complaint can be made within the institution. An institution's leaders should actively encourage children, staff, volunteers and others connected with the institution to make a complaint when they encounter concerning behaviour, and ensure they are supported in doing so.

What is a complaint?

See Section 3.2.1 for the definition of a complaint.

What types of behaviour could be the subject of a complaint

A complaint can range from stating suspicion or concerns, through to making allegations of child sexual abuse that could amount to criminal conduct. All complaints must be taken seriously. Typically, there are three categories of behaviour that may be the subject of a complaint of child sexual abuse: concerning conduct; misconduct; and criminal conduct. All three categories of behaviour may be the subject of a complaint of child sexual abuse, and all three categories are to be cited and explained in the institution's code of conduct.

Concerning conduct and misconduct

In relation to child sexual abuse, 'concerning conduct' can refer to behaviours, or patterns of behaviour, that are a risk to the safety of children.

‘Concerning conduct’ also refers to ambiguous behaviours that are or could be inappropriate for children to be exposed to. Some concerning behaviours may not be identified by an institution’s code of conduct. For example, a child may make a complaint that an adult’s behaviour is ‘creepy’ or makes them feel uncomfortable, without being able to identify a specific behaviour that contravenes the code of conduct.⁴¹⁰ Commissioned research identified that ‘many of the behavioural indicators of abuse and “grooming” are ambiguous, requiring judgment or interpretation to decide if they are cause for concern’.⁴¹¹

Experts who were consulted as part of our commissioned research study, *Key elements of child safe organisations*, highlighted the importance of institutions identifying and acting on concerning behaviours even when they do not constitute child sexual abuse. One expert commented: ‘A code of conduct can play an important role in identifying such potentially concerning behaviours and stopping them from escalating into even more serious, abusive behaviours’.⁴¹²

‘Misconduct’ refers to behaviours that constitute a breach of the institution’s code of conduct. Misconduct could also refer to behaviours that constitute sexual misconduct under a reportable conduct scheme, or a breach of an industry or allied professional body code of conduct.⁴¹³

Behaviours of concern, and those that, if proven, could constitute misconduct, may include:⁴¹⁴

- showing favour to one child over others – for example, giving one child a lift home but not others
- giving gifts to a child or their family
- babysitting, mentoring and or tutoring a child out of work hours
- taking photos of a child who is in the care of the institution outside of official duties
- repeatedly visiting a child and/or their family at their home for no professional reason
- negative grooming tactics such as persistent criticism and discrediting of a child
- wearing inappropriate clothing around children (for example, clothing with sexually explicit images or messages, or clothes that expose or accentuate the genitals or breasts)
- exchanging photos with a child online
- using social media to engage with a child, except as allowed by the institution’s official communication policy
- sharing phone numbers with a child, except as allowed by the institution’s official communication policy
- being alone with a child when there is no professional reason for doing so
- not respecting the privacy of children when they are using the bathroom or changing – for example, on excursions and in residential situations

- using sexual language or gestures in the presence of children
- sharing details with a child of one's own sexual experiences
- asking children to keep a relationship secret – for example, a staff member encouraging a child to spend time alone with them and instructing the child not to tell others about this time together
- showering, dressing or undressing with the door open in the vicinity of children – for example, on excursions and in residential situations
- making written or verbal sexual advances to children.

Some of these behaviours may arise in circumstances where staff or volunteers misuse legitimate intimate access to a child, such as supervising or assisting with showering a child with disability. Many of these behaviours may also fall under the definition of grooming. Grooming and the laws that apply to it are discussed in more detail in Volume 2, *Nature and cause*. Volume 4, *Identifying and disclosing child sexual abuse* also considers grooming, including the nature of the grooming process and the challenges of identifying when it is occurring.

Criminal conduct

Certain types of conduct involving a child are unlawful and criminal. Conduct that would otherwise be lawful may constitute a criminal offence depending on factors that vary between jurisdictions, such as the applicable age of consent, the relationship between the parties involved, or the relative ages of the parties involved. Other conduct will always be unlawful irrespective of these variables.

Depending on these factors and other circumstances, the following examples may constitute criminal conduct:⁴¹⁵

- obscene exposure – for example, an adult masturbating in front of a child or exposing their genitals
- having, attempting to have or facilitating any kind of sexual contact with a child
- possessing or creating child exploitation material or exposing a child to pornography
- giving a child goods, money, attention or affection in exchange for sexual activities or images
- voyeurism involving a child – that is, observing a child (including viewing them using a camera or recording device) while they are dressing, bathing, using the bathroom or engaging in another activity that would usually be considered private
- sexting a child – for example, an adult sexting a child or one child sharing sexually explicit photos of another child without that child's consent
- grooming offences, as defined by law in most jurisdictions.

Code of conduct

A code of conduct can be a useful tool by which institutions can outline unacceptable behaviours. As part of an institution's governance framework, a code of conduct serves to facilitate child safe outcomes for the children in an institution's care. It can also help to:

- establish a clear set of rules and expectations so that individuals are not left to recognise on their own, without guidance, potential for problems or to judge whether and how to voice concerns⁴¹⁶
- encourage and support adults and children to raise concerns, even when they may appear trivial⁴¹⁷
- instruct staff not to wait until there is a firm suspicion before making a complaint, as problematic behaviour such as grooming may be observable long before forming a clear suspicion⁴¹⁸
- articulate the likely actions the institution will take if there is a breach of the code of conduct.

All institutions that deal with children should have a code of conduct that outlines behaviour towards children that the institution considers unacceptable, encompassing concerning conduct, misconduct and criminal conduct.

A code of conduct establishes a common understanding of the standards of behaviour expected of all employees and volunteers in an institution.⁴¹⁹ It should also identify the conduct considered reasonable for the purposes of the discipline, management and care of children.⁴²⁰ A code of conduct applies to all staff and volunteers in the institution (including senior leaders and board members).⁴²¹ It should be acknowledged and signed by all staff and volunteers.⁴²²

A code of conduct should be explicit about the kinds of behaviour that are not acceptable, and behaviour that must be reported. Relevant examples of what constitutes a breach of the code of conduct should be identified.⁴²³ Institutions should specify penalties for staff who breach the code of conduct.

When identifying types of behaviour in a code of conduct as acceptable or unacceptable, the context in which the institution operates and the nature of the services it provides to children should be considered. Behaviours that are of concern in some contexts may not be in others. As People with Disability Australia submitted:

Issues around privacy can be more complicated for children with disability. Children with disability may need support with intimate personal care such as getting changed, toileting or showering. As such, the code of conduct should be altered to build in oversight mechanisms in these cases. For instance, it could specify that two staff members are required to be present while children are getting changed, or being assisted in changing,

at school ... [Some behaviours are] quite age specific. For instance, toddlers or children in child care may need to have their nappies changed, a situation which should still be subject to the code of conduct.⁴²⁴

A code of conduct should:

- outline unprofessional staff member or volunteer behaviours that the institution considers unacceptable, including concerning conduct, misconduct or criminal conduct
- define various forms of abuse including child sexual abuse and grooming; define sexual misconduct in a way that is consistent with the jurisdiction's reportable conduct scheme, where one is in place; and avoid vague terms such as 'appropriate' and 'inappropriate', unless they are further defined and examples provided
- outline the types of behaviour that must be reported to the police, child protection authorities or other government agencies
- include a specific requirement to report any concerns, breaches or suspected breaches of the code to a person responsible for handling complaints in the institution or to an external authority when required by law, and/or the institution's complaint handling policy
- be accessible to everyone in the institution (including clients) and communicated by a range of mechanisms
- provide for clearly documented response mechanisms and pathways for breaches
- specify the penalties for staff and volunteers who breach the code of conduct
- outline the protections available to individuals who make complaints or reports in good faith to any institution engaging in child-related work.

The code of conduct should also cross-reference any other policies, procedures and guidelines that support, inform or otherwise relate to the code of conduct (for example, complaint handling policy and/or child protection policy).⁴²⁵

How to make a complaint

Institutions should establish appropriate mechanisms for children and adults in the institution to make complaints. These mechanisms should be designed to appeal to those who could raise a complaint, including children, families and staff members. Complaints mechanisms should be confidential, accessible and culturally appropriate. Possible barriers to making a complaint should be identified and mitigated.

Children, especially younger children, may not make a complaint by following a formal complaint handling process. Children may instead make a verbal or non-verbal disclosure of sexual abuse. Children, including children with disability, may make non-verbal disclosure of sexual abuse through behaviours and/or physical signals.⁴²⁶

Mechanisms to make a complaint can be internal and/or external to the institution. Institutions are to provide information about a range of complaint options, and ensure that all mechanisms are independent and accountable.

An institution's complaint handling policy should specify how a complaint can be made within the institution. All employees should know, or be provided with, the name and contact details of the institution's complaints officer, and should understand that they must refer a complaint as a matter of urgency. Staff should also know where they can confidently and confidentially lodge a complaint or note a concern about a fellow staff member. Children, parents and guardians should also know how to contact the complaints officer. There should be avenues for making a complaint within an organisation that are secure and anonymous. For example, during our consultations at youth detention facilities, we heard that children can place a written complaint of any type into secure boxes that are prominent in the residential areas. Children were aware of this mechanism and many told us they used it.⁴²⁷

A complaint handling policy should also explain all complaint pathways external to the institution, including to an independent body such as an ombudsman, which can be accessed when an institution responds inadequately.⁴²⁸ The policy should explain how any available technology, such as a helpline or website, will be used to meet any special needs that complainants might have.

Some sectors may have officers external to the institution that can supply information to inform a complainant. For example, during *Case Study 55: Institutional review of Australian Christian Churches and affiliated Pentecostal churches*, church institutions discussed the merits of a national helpline for making complaints of child sexual abuse. Pastor Wayne Alcorn of Australian Christian Churches said:

The big changes were independent support, the 1800 Helpline, which instantly means that the local pastor, perhaps even in a small or rural setting, doesn't have to be an expert, they can call on people who really do have expertise in this field.⁴²⁹

Finally, some peak bodies provide advice and information to support individuals and institutions involved in complaints of child sexual abuse. For example, 'Play by the Rules', a unique partnership between a range of government agencies and independent sporting associations, provides accessible advice and useful resources to individuals about how to make a complaint, and to sports clubs on how to receive and act upon complaints.⁴³⁰ Similarly, in our *Sporting clubs and institutions* case study, the Child Protection Officer for Football NSW gave evidence that appointing Member Protection Information Officers led to children being more comfortable about disclosing allegations of sexual abuse.⁴³¹

How children can be supported to communicate a complaint

When concerns about child sexual abuse arise, irrespective of the manner in which they arise, institutions should support victims or others making complaints. This requires the institution to be proactive and to understand the particular needs and circumstances of children in their care. Offering the appropriate support to communicate a complaint – such as communication aids, language translators or culturally competent staff who can work with children from culturally diverse backgrounds – will enable the substance of a complaint to be heard and understood by the institution. We heard of many instances where institutions neither identified the need for nor provided such communication supports.

Some children with disability might face specific challenges when communicating child sexual abuse complaints and hence require specific additional support. Commissioned research suggests that children with disability – particularly children with communication and speech difficulties – are at greater risk of child sexual abuse. Further, these difficulties are likely to impede disclosure.⁴³²

For these children, a complaint about sexual abuse may be made non-verbally – for example, through actions or behavioural indicators such as signs of anxiety, sudden aggression, withdrawal, regression or sexualised behaviour. Institutions working with children who may communicate in this way should understand and be skilled in recognising disclosures or complaints when they occur. A written submission from Children with Disability Australia stated that some institutions can misinterpret behavioural signs and assume they are simply symptomatic of disability.⁴³³

To support children with disability to communicate a complaint, institutions should work with adapted communication tools or provide other supports.⁴³⁴ The research noted that, for this specific population ‘creative research methods are required to ensure the potential communication difficulties of the child do not inhibit the sharing of information about safety and abuse and neglect’.⁴³⁵

3.5.2 Responding to a complaint

Institutions should respond to complaints in a manner that is proportionate to the nature of the complaint and risk of harm, as well as the immediacy of the situation. As general guidance, the sequence of steps an institution should take after a complaint has been received are to:

- receive and record the complaint
- report the complaint to the police if the child is, or other children are, in immediate danger
- report the complaint to external authorities as required by state and territory legislation and/or the institution's complaint handling policy and procedure
- conduct a risk assessment to identify, mitigate and manage risks to children to make sure they are safe from abuse
- provide support to those involved in the complaint
- if the complaint involves potentially criminal conduct that has been reported to the police, consult with the police before undertaking an institutional investigation
- implement the outcomes of the police and/or internal investigation, including disciplinary or educative action, and communicate investigation outcomes to affected parties
- report institutional investigation outcomes to relevant external authorities where required
- undertake a careful and thorough review of the complaint to identify the root cause of the problem, any systemic issues, and remaining institutional risks
- engage the institution's redress policy and processes if required.

Figure 7.1 shows an overview of this general complaint handling process.

The remainder of Section 3.5.2 gives guidance on the steps institutions should incorporate and tailor into a complaint handling policy and procedure, and/or into their child protection policies.

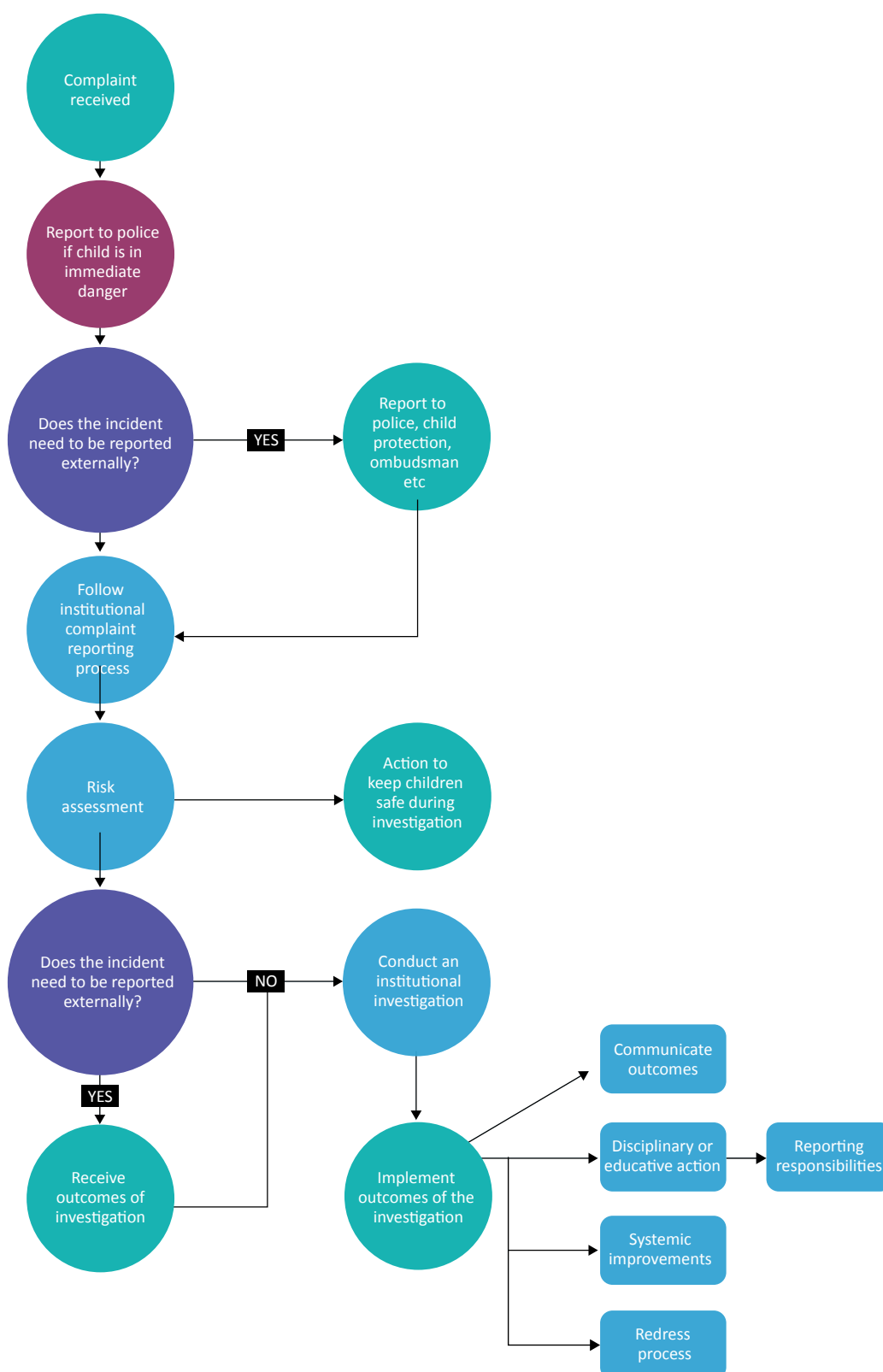


Figure 7.1 – An overview of the general complaint handling process

Who is responsible for responding

An institution is safer for children if the people in it have a strong sense of personal responsibility and are held to account.⁴³⁶ At every level, staff need to accept that they are accountable for the way a complaint is handled. CEOs, complaints managers and any relevant boards and councils should all have responsibility and oversight of responses to complaints of child sexual abuse to best protect children.

Institutions can be made accountable if responsibility is clearly and transparently assigned to a dedicated person. An institution should specify the individual or individuals who will:

- be responsible for handling the complaint (if different from the person to whom the complaint is first made)⁴³⁷
- oversee the investigation – an institution should ensure that a complaint will be handled by a person within an institution who has sufficient seniority and authority, is impartial and objective (for more detail, see Section 3.5.3, ‘Investigating a complaint’)
- maintain a complaints register.

An institution may decide to establish a dedicated complaint handling officer role. If so, all employees should know the name and contact details of this person, and understand that they should refer any complaints to them as a matter of urgency. Staff should also know where they can confidently and confidentially lodge a complaint or note a concern about a fellow staff member. Children, parents and guardians should also know how to contact the complaints officer.

Complaints management roles and functions assigned to individuals in specific positions – including who is accountable and who is responsible and for what – should be specified in the complaint handling policy. Tasmania’s Sexual Assault Support Service submitted that accountability must be:

shared across all executive levels of the institution; however, we also believe that it is vital for complaint management tasks to be formally delegated, documented and followed up. If delegation guidelines in a policy are too broad, there is a risk that key complaint management tasks will be overlooked.⁴³⁸

A complaint handling officer should have the necessary skills and knowledge to receive, handle and investigate complaints.

What are the responsibilities to report to external authorities

The police should always be called immediately if a child is in immediate danger. Where this is not necessary, institutions should report the complaint to external authorities as required by state and territory legislation and/or the institution’s complaint handling policy and procedure. Persons associated with institutions should report to police in circumstances where they suspect or know

that a child is being or has been sexually abused. Institutions should encourage and provide support for the reporting of complaints of child sexual abuse to external authorities.

Chapter 2, 'Reporting institutional child sexual abuse to external authorities' discusses reporting of institutional child sexual abuse to external authorities in more detail.

How to assess immediate risks and establish safeguards

When a complaint has been made, the institution should assess the risks associated with the complaint and implement necessary safeguards.⁴³⁹ Assessment of risk should be continual – beginning when the complaint is initially made and continuing as the complaint is being investigated.⁴⁴⁰ Strategies to address risk should be modified as required during the investigation.

In the *YMCA NSW* case study, we heard evidence from Professor Smallbone about how the risks that a subject may pose to children could be best managed by institutions:

Best practice requires organisations to quickly remove persons subject to a credible allegation of sexual abuse from any further opportunities to be in contact with children in the organisation's care. This should be done without prejudice as to the validity of the allegations, for example by continuing the accused person's employment on full pay but advising them not to come to work. Steps should be taken to ensure their safety and wellbeing. Once an allegation has been substantiated the employer may immediately terminate the person's employment.⁴⁴¹

Institutions should conduct a risk assessment of any complaint of child sexual abuse they receive prior to the complaint being investigated. The merit of each complaint, with consideration of any previous complaints particularly against the same person, needs to be assessed. The initial risk assessment should consider:

- any immediate and ongoing risks associated with the complaint, including the safety of the adult or child complainant and other children
- action to be taken against the subject of the complaint including supervision, removal of contact with children, or being stood down
- the institution's expertise in assessing risk and the need to obtain expert advice
- the need for skilled cultural and linguistic interpreters to be involved in the complaint process
- whether it is necessary to report the complaint to an external authority
- who should be informed about the complaint, and whether there are restrictions on the information they can be given (for example, due to privacy laws and other confidentiality obligations)
- how to implement the decisions made as a result of the initial risk assessment.

When assessing and managing risk, managers and leaders should be aware of errors in human reasoning that might diminish an understanding of risk. Research we commissioned suggested that people's judgments are vulnerable to cognitive biases, which are hard to eradicate.⁴⁴² Institutions can benefit from mechanisms through which staff members can talk through their judgments and which encourage a culture of critical reflection.⁴⁴³ For example, there is often a misconception that adults and children with disability are asexual and insensitive to pain.⁴⁴⁴

Myths about the 'asexuality' and 'insensitivity to pain' of the developmentally disabled may have been particularly influential in the acknowledgement of sexual abuse being delayed and in the continuing inadequacy of sexual abuse treatment services.⁴⁴⁵

Such myths have resulted in many people thinking that children with disability are unlikely to be victims of child sexual abuse or capable of harmful sexual behaviours. Accordingly, individuals and institutions have misunderstood the risk variables and safeguards against abuse needed.

Institutions should undertake a final risk assessment and safeguarding step at the conclusion of the complaint process. They should also review the complaint outcome to identify the root cause of the problem, any systemic issues and any remaining organisational risk. This is discussed further in Section 3.5.5 'Achieving systemic improvements after a complaint'.

How to communicate with affected parties

A complaint of institutional child sexual abuse will be of interest and concern to many people associated with the institution (referred to in this section as 'affected parties'). As the NSW Ombudsman explains, 'they will naturally be interested in receiving further information about the allegation, how it is being handled and whether there are broader implications for members of the community'.⁴⁴⁶

Institutions' complaint handling policies and procedures should include guidance on determining whether, and in what circumstances, information related to a complaint of child sexual abuse will be communicated to affected parties. Affected parties may include:

- parents, guardians or carers of victims
- third parties associated with the institution, such as the institution's staff and volunteers, other parents, guardians or carers of children involved in the institution, and other children involved in the institution
- other institutions
- law enforcement authorities
- the media.

The reasons for, and circumstances under which, an institution would communicate with these groups of affected parties will differ. For example, informing a child's parents or carers about a complaint involving their child recognises their primary responsibility for the upbringing and development of their child and their role in advocating for and supporting their child during the complaint handling process; sharing information with another institution about a complaint against a current or former employee recognises the risk that the employee may pose to children. Information sharing in this context is considered in detail in Volume 8, *Recordkeeping and Information sharing*.

More broadly, communicating with parties affected by a complaint of institutional child sexual abuse can:

- help make sure victims are given enough support to tell their story
- encourage any other victims of abuse to disclose it, including by prompting parents, carers or guardians to raise relevant concerns with the children in their care⁴⁴⁷
- warn and protect potential victims⁴⁴⁸
- ensure affected parties have information about available support services⁴⁴⁹
- assist other institutions to keep children safe
- help the institution deal with the impacts of child sexual abuse on secondary victims and the wider community
- provide an opportunity for the institution to organise protective behaviours workshops for children
- counter the spread of inaccurate and unreliable information⁴⁵⁰
- build a culture in which children and adults connected to the institution are alert to the risk of child sexual abuse.

Communication with affected parties can arise about complaints of child sexual abuse that involve criminal conduct and complaints that do not. In both contexts, communication should occur in a way that minimises legal complications. According to the NSW Ombudsman, 'generally, this means that the content of any disclosure should be measured and impartial, and limited to the information necessary to fulfil the purpose of the disclosure'.⁴⁵¹

Institutions should consider that communication of information related to child sexual abuse may be restricted by legislative, regulatory, contractual or other obligations. For example, privacy principles may prohibit the disclosure of an individual's personal information.

Some state and territory governments have sought to enable communication around institutional child abuse in certain situations. For example, the New South Wales, Victorian and Australian Capital Territory reportable conduct schemes allow for the oversight body that administers the scheme or the head of an institution that comes under the scheme to communicate information about a reportable conduct investigation to the child who was allegedly the subject of the reportable conduct and their parent or carer.⁴⁵²

Staff responsibilities for communication, and the timing of communication, are also important considerations when disclosing information to affected parties.

Communicating about complaints that do not involve criminal conduct

Where a complaint does not involve criminal conduct, institutions should consider whether there is a need to communicate information about the complaint with affected parties. Institutions that come under a reportable conduct scheme may be able to seek guidance from the oversight body that administers the scheme in these circumstances – for example, where the complaint involves sexual misconduct that does not meet a criminal threshold, such as the crossing of professional boundaries.

Communicating about complaints involving criminal conduct

In circumstances where the police are involved in dealing with a complaint of child sexual abuse and the institution wishes to communicate with affected parties about the matter, it should only do so in consultation with the police. Police and the institution should cooperate to ensure that communication with affected parties is appropriate. They should give priority to the needs of the police in conducting the investigation but also recognise the legitimate needs of these parties to know what is happening and to consider taking protective action in relation to other children. The police and the relevant institution need to be clear about what the institution should or should not be doing to manage communications, to be consistent with the police investigation.

If the institution has concerns – for example, privacy or defamation concerns – about communicating relevant information it should ask the police (or the child protection agency if it is involved) to communicate the information to affected parties if the communication is reasonably required for law enforcement or child protection purposes or is otherwise appropriate.

A number of submissions to our consultation paper on complaint handling raised issues about interactions between institutions and the police when they were responding to complaints.⁴⁵³ For example, Scouts Australia submitted that police are often reluctant to give updates on their investigations.⁴⁵⁴

In our *Criminal justice* report, we state that achieving clarity and appropriate coordination in these areas should assist police, particularly in ensuring that any institutional response does not interfere with or undermine the police investigation.⁴⁵⁵ We recommend that each Australian government should ensure that its policing agency develops procedures and protocols to guide the police, other agencies, institutions and the broader community on the information and assistance police can provide to children, parents and the broader community where a current allegation of institutional child sexual abuse is made (see Recommendation 14).⁴⁵⁶

For further information on police communication and advice to institutions, children, families and the community see Chapter 9 of our *Criminal justice* report.

Considerations around responses to particular types of complaints

Institutional responses to complaints should follow the general guidance around the complaint handling process that we provided in Figure 7.1. In this section, we outline particular considerations for institutions in responding to the types of complaints identified in Section 3.2, ‘Understanding complaint handling’.

Concerned parents, carers, staff and other adults

Institutions should be aware that making a complaint of child sexual abuse can be a challenging and/or sensitive process for parents, carers, staff and other adults. Their complaint should be taken seriously and support should be offered, as outlined in Section 3.5.4 ‘Providing support and assistance’. The complainant may wish to be informed about, and involved in, the complaint handling process. Any communication with the complainant should consider our discussion in the preceding section on communication with affected parties.

Disclosures from children

Appropriate responses to a child disclosing sexual abuse can vary depending on whether the person the child has disclosed to is, for example, a front-line staff member, a senior manager or a specialist complaints manager. However, all individuals in institutions should be aware that when a child discloses they should:

- listen to the child⁴⁵⁷
- assess the child’s physical and emotional safety, and make them feel safe⁴⁵⁸
- support the child by reassuring them that telling someone was the right thing to do and that the person receiving the disclosure believes them⁴⁵⁹
- emphasise to the child that what occurred was not their fault⁴⁶⁰
- consider whether assistance is needed to help a child communicate their concern or disclosure (for example, from a disability expert, an assistive communication device for children with disability,⁴⁶¹ or a language or cultural interpreter)
- take into consideration the child’s stage of cognitive development and how this might affect the disclosure. For example, a child may make a tentative or partial disclosure or retract a disclosure about sexual abuse⁴⁶²
- stop questioning the child if the conduct described is likely to constitute criminal conduct, as this is a matter for the police⁴⁶³
- if they are a junior staff member hearing the disclosure, report the disclosure immediately to senior management and not question the child
- undertake to do something in response to what the child has said and, where appropriate, explain what will be done and when⁴⁶⁴

- refrain from making promises that cannot be kept, including that the information will remain confidential; tell the child who will be told and why
- be aware that the relationship between trauma and disclosure can vary, and use that knowledge to inform listening to and assessing the disclosure.⁴⁶⁵ For example, some individuals experience emotional numbness as a symptom of trauma. Victims of child sexual abuse who have been traumatised by the abuse (which does not happen in all cases), could disclose the abuse in an unemotional way. This does not mean the victim is unharmed or fabricated the abuse. The traumatised individual could require support from an intermediary, a communication expert or a counsellor to make a disclosure.⁴⁶⁶ Volume 9, *Advocacy, support and therapeutic treatment services* discusses trauma symptoms in more detail, and the need for staff in all service systems to have a basic understanding of trauma
- document the conversation using the child's exact words as far as possible⁴⁶⁷
- respect a child's wishes if they do not want to participate in an investigation, especially if it is likely to further traumatise them. A successful investigation does not always need the active involvement of the child complainant.

Listening to children who disclose is particularly important when the children have disability. National Disability Services (NDS) submitted to us that:

People with disability using disability services told NDS that the number one factor in feeling safe was being listened to. If people feel they are generally not listened to about anything, they are even less likely to be in a position to 'complain'.⁴⁶⁸

Research suggests that institutions should consult victims from culturally and linguistically diverse backgrounds about whether they would prefer to interact with a worker from within or outside their own cultural community, when making a complaint.⁴⁶⁹ A worker from the same cultural community is more likely to be able to provide appropriate cultural sensitivity and, if necessary, language support.⁴⁷⁰ However, victims may fear that their confidentiality will be breached if they disclose to someone from their own community, or they might be uncomfortable with anyone from their community knowing about the abuse.⁴⁷¹

Confidentiality of disclosures and complaints is also an important consideration for Aboriginal and Torres Strait Islander victims. In small and remote Aboriginal and Torres Strait Islander communities, perpetrators, victims and their respective families often continue to live within the same community after the abuse has occurred.⁴⁷²

We canvass the issues surrounding the disclosure of child sexual abuse in Volume 4, *Identifying and disclosing child sexual abuse*, which also deals with the barriers victims encounter when speaking of or disclosing behaviour of concern.

Complaints of historical abuse

Institutions' policies and procedures should cater for adult survivors of abuse who make a complaint of historical child sexual abuse. As the Anglican Church of Australia submitted:

Processes should be designed to accommodate the specific needs of children and their guardians dealing with current abuse and at the same time respond to the needs of adult survivors of abuse.⁴⁷³

Procedures for dealing with complaints of historical abuse should allow for assistance to be provided to the complainant. Priorities include enabling complaints of historical abuse to be made by receiving and listening to these complaints and acknowledging the abuse suffered.

After receiving a complaint of historical abuse, institutions should consider whether complaints of historical abuse need to be reported to an external authority. The subject of the complaint may still be with the institution, or they may have left the institution. Where the subject of the complaint has left the institution, it may have no way of knowing his or her current circumstances, such as whether he or she is alive, and, if so, still working with children. External government authorities should be able to determine such matters – for example, by checking the name of the subject of the complaint against the relevant state or territory Working With Children Check system.

When responding to complaints of historical abuse, institutions should also consider whether the circumstances of the alleged abuse indicate a need to change its complaint handling policies and procedures, such as by updating its code of conduct. This is part of achieving systemic improvements after a complaint.

Complaints of historical abuse may involve circumstances where the complainant is still receiving services from the institution where they were sexually abused as a child.⁴⁷⁴ The risk of the complainant facing repercussions for this type of complaint is higher than for other historical abuse complaints.⁴⁷⁵ Additional safeguards are needed to protect the complainant when responding to this type of complaint. For example, an adult with disability may still be within, or receiving services from, the same institution and may require an independent support person throughout the complaint handling process.

Historical abuse complainants will be adults who might have their own views about what the institution should do with the information they provided as part of their complaint. This is very different from situations involving a child victim where the institution may have to give the information to third parties automatically, for example, under laws concerning mandatory reporting to child protection authorities. The issue of reporting to police, including blind reporting⁴⁷⁶, is considered in our *Criminal justice* report.⁴⁷⁷

Complaint handling and redress

One of the ways in which a person may seek a response to a complaint of child sexual abuse is through an established redress scheme or process.

While processes for complaint handling and for providing redress may have similarities, they have different purposes. The purpose of a complaint handling process is to investigate a complaint to determine whether an incident has occurred, in order to make decisions about what protective and/or disciplinary measures need to be put in place, and what the institution can do to better prevent similar incidents from occurring in the future. The purpose of a redress process is to determine whether a person is eligible to receive redress for the abuse they experienced, including measures such as a direct personal response (that is, an apology) from the institution, access to therapeutic counselling and psychological care, and monetary payments.⁴⁷⁸

Following recommendations we made in our *Redress and civil litigation* report⁴⁷⁹ in 2015, the Australian Government in November that year announced a national redress scheme for victims of child sexual abuse in institutional contexts. Any state, territory or institution will be able to opt into the scheme.⁴⁸⁰ The Australian Government's proposed national redress scheme will have implications for how institutions respond to complaints made by adults who were victims of child sexual abuse. However, it is important to note that the national redress scheme will not replace the need for institutions to ensure they respond to complaints through complaint handling processes that align with the guidance and recommendations set out in this chapter.

In announcing the national scheme, the federal Minister for Social Services, Christian Porter, stated that it would only deviate in 'very few' ways from the recommendations in our *Redress and civil litigation* report.⁴⁸¹

These recommendations included that a national redress scheme:

- be open only to those who suffered abuse prior to the scheme's commencement (referred to in the report as 'past abuse')⁴⁸²
- should rely primarily on completion of a written application form⁴⁸³
- should apply the standard of proof of 'reasonable likelihood' when determining applications for redress⁴⁸⁴
- should not make any 'findings' that any alleged abuser was involved in any abuse.⁴⁸⁵

In addition, we made a number of comments and recommendations on the interaction of a national redress scheme and the investigation and disciplinary processes of institutions. In summary:

- An institution may be informed by the redress scheme of allegations of child sexual abuse against a person associated with the institution. This may occur at any point in the redress scheme's process. We recommended in our *Redress and civil litigation* report that a redress scheme should inform the institution that is named in an application for redress about the allegations made in the application.⁴⁸⁶
- If an institution is informed by the redress scheme of an allegation which concerns a person who is still involved with the institution, the institution should initiate its complaint handling process. We noted in our *Redress and civil litigation* report that if an alleged abuser named in an application for redress is, or may be, still working or otherwise involved with the institution, the institution should pursue its usual investigation and disciplinary processes when it receives advice from the scheme about the allegations.⁴⁸⁷
- We recommended a redress scheme should request that the institution provide relevant information, documents or comments to the scheme.⁴⁸⁸
- We recommended a redress scheme may decide to defer determining an application for redress while the institution conducts its investigation of the complaint, and that the scheme may also have the discretion to consider the outcome of the disciplinary process, if it is provided by the institution, in determining the application.⁴⁸⁹ However, the focus of the redress scheme must be to make a determination of eligibility for redress and a calculation of monetary payments in a timely manner.⁴⁹⁰ If waiting on an institution's disciplinary process would significantly delay the provision of redress, it may be appropriate for the redress scheme to proceed with determining the application.
- We recommended in our *Redress and civil litigation* report that a redress scheme should report any allegations to the police if it has reason to believe that there may be a current risk to children.⁴⁹¹ We addressed this issue further in our *Criminal justice* report, where we also discuss 'failure to report' offences and blind reporting to police.⁴⁹²

In our view, once further details of the national redress scheme are released, institutions should review any relevant policies and procedures in light of the scheme.

Children with harmful sexual behaviours

Institutions responding to complaints of children exhibiting harmful sexual behaviours need to consider their duty of care both to the child who is a victim and to the child who has caused harm. This is a complex area. As the Royal Australian and New Zealand College of Psychiatrists submitted:

Child-to-child sexual abuse is a particularly complex area, which requires careful and appropriate response. Problem sexual behaviour in children can cause high levels of anxiety and confusion for staff, and it is important that they are trained to respond appropriately to this. Children with these behaviours, can often be supported to return to a healthy developmental track, however early intervention and an informed and therapeutic approach is crucial.⁴⁹³

When responding to a complaint involving children with allegedly harmful sexual behaviours, institutions should first consider the nature of the behaviour that is the subject of the complaint. Parents, teachers, carers and others working with children may find it hard to distinguish between developmentally appropriate sexual behaviours and harmful sexual behaviours. It becomes difficult for them to know if there is a problem and, if there is, how best to respond.⁴⁹⁴

Developmentally appropriate sexual behaviours in young children are exploratory and spontaneous, are mutually acceptable and agreed, and involve children of a similar developmental level.⁴⁹⁵ The behaviour is playful and curious, rather than aggressive, and does not cause physical or emotional harm to the children or others.⁴⁹⁶

Sexual behaviours can cause harm to a more vulnerable child when the dynamics of children's sexual activities change. Harmful sexual behaviours might include behaviours classified as criminal in some jurisdictions. They can:

- become non-consensual
- involve dominance, coercion or threats
- involve large differences between the children, for example, if one child is several years younger, has developmental delays or is much smaller physically.

Volume 10, *Children with harmful sexual behaviours* discusses the differences between children's healthy and harmful behaviours. It also provides information on resources and tools that people in institutions can use to identify whether behaviours are developmentally appropriate, concerning or harmful.

If an institution has determined that a complaint involves children with harmful sexual behaviours, it should consider two main factors when responding:

- Children with harmful sexual behaviours have often experienced trauma and need treatment and support.⁴⁹⁷ Research literature and practitioner knowledge suggests that children with these behaviours are likely to have experienced compounding factors of childhood adversity, such as exposure to domestic violence, prior sexual or physical abuse, interpersonal difficulties, neglect, carer substance abuse, social isolation, cognitive delays and economic disadvantage.⁴⁹⁸
- The age of the child who caused the harm becomes important. Different laws regarding criminal responsibility apply for children under and above 10 years of age in Australia.⁴⁹⁹ Children cannot be charged with a criminal offence until they are over 10 years of age. Between the ages of 10 and 13, they are presumed not to be criminally responsible unless proven otherwise.

These factors will influence the degree to which police, child protection and treatment providers should be involved in the response.

Our *Harmful sexual behaviours of children in schools* case study considered the systems, policies, procedures and practices for responding to complaints of children sexually harming other children. Expert witnesses gave evidence that a best practice response requires adults in the institution to:

- identify and name harmful sexual behaviours⁵⁰⁰
- convey to victims that they are believed and that the harm to them is recognised⁵⁰¹
- immediately convey to the child who has engaged in harmful sexual behaviours that their behaviour is wrong and it may require a range of consequences⁵⁰²
- ensure the physical safety of both the child who is the victim and the child with harmful sexual behaviours, which may include separating the children⁵⁰³
- make mandatory reports to child protection agencies, where a child or children are at risk of sexual harm⁵⁰⁴
- report to the police where appropriate, but not in circumstances where a child's behaviours are part of the normal trajectory of child sexual development.⁵⁰⁵ For example, if a young child takes their pants off in class, there would be no need to call the police.

We have taken this expert advice into account in developing guidance around the procedures tailored to children exhibiting harmful sexual behaviours that an institution's complaint handling policy should include. It is our view that an institution's complaint handling policy should contain procedures for:

- ensuring the safety of the victim, and any other vulnerable children (for example, children with disability). If the child who is a victim has to be moved out of, or to a different part of the institution (for example, to a different class or to another out-of-home care placement), it should be clearly explained to the child that the move is not because he or she has done anything wrong⁵⁰⁶
- ensuring the safety of the child with harmful sexual behaviours
- providing medical and psychological support to the victim and the child with the harmful sexual behaviours. For the child with harmful sexual behaviours, this should include an expert therapeutic assessment and, if necessary, therapeutic intervention that is tailored to their needs and circumstances⁵⁰⁷
- assessing whether or not the incident should be reported to the police. This initially depends on the age of the child with harmful sexual behaviours and the nature of the acts. In most states and territories, allegations of sexual abuse by a person aged 10 or older can be criminal matters and need to be investigated by the police
- informing the parents, carers or guardians of the children involved in the complaint of what has occurred. This should be done in consultation with the police in circumstances where criminal conduct may be involved

- developing a risk management plan when both children involved in the incident live in or attend the same institution. This should be done in consultation with the children's parents, carers or guardians and any practitioners who have therapeutically assessed the children. The plan should address the needs of both children, as well as all other children in the institution who may be at risk of sexual abuse
- developing a behaviour support plan for the child with harmful sexual behaviours,⁵⁰⁸ which might include providing an independent support person throughout the complaint handling process, involving a case manager and providing legal representation where required⁵⁰⁹
- in out-of-home care settings, finding an alternative placement, and pre-arranged access to therapeutic treatment, for the child with harmful sexual behaviours (or, in cases where safety cannot be assured, the child who is a victim). The child's assessment and treatment should inform subsequent placement decisions, and placement should provide a safe and supportive environment that does not add to any trauma the child might have experienced⁵¹⁰
- determining if information about the child with harmful sexual behaviours can or should be shared with other institutions and individuals with responsibilities related to children's safety and wellbeing. Information sharing in this context is discussed in Volume 8, *Recordkeeping and information sharing*.

Institutions should also be guided by any formal advice state or territory governments may develop about how to respond to complaints of child sexual abuse involving a child with harmful sexual behaviours in their state or territory.⁵¹¹ Some government departments have developed guidelines in this area.⁵¹²

Volume 10, *Children with harmful sexual behaviours* discusses issues concerning children with sexually harmful behaviours that institutions should be aware of when developing complaint handling policies and procedures. It also provides advice that tailors the generic elements of a complaint handling policy and procedure discussed in this chapter (such as making and investigating complaints) to complaints involving children with sexually harmful behaviours. Volume 13, *Schools* recommends that schools develop policies for managing complaints about harmful sexual behaviours exhibited by children and explains what these policies should cover.

Anonymous complaints

Institutions' complaint handling policies should specify that anonymous complaints can be made and how to make them. The Victorian Disability Services Commissioner told us, 'Some of the most serious complaints that are investigated by our office have been received confidentially or anonymously from staff and others'.⁵¹³

For some victims, the option of making an anonymous complaint provides what they perceive is a safe and secure way to make a complaint. For example, in discussions with schools, we heard that students may feel more comfortable making a complaint anonymously.⁵¹⁴ Institutions should be prepared to receive anonymous complaints to ensure that no complainant is intimidated by a process that requires them to personally identify themselves.

Unsubstantiated complaints

In Section 3.2, ‘Understanding complaint handling’, we outlined that a significant proportion of child sexual abuse complaints remain unsubstantiated because evidence is absent, the complaint cannot be proved, or the complainant withdraws the complaint. A complaint being unsubstantiated for these reasons does not mean that the abuse did not occur. Accordingly, good practice is that institutions should offer complainants and other affected parties advocacy, support and therapeutic treatment even where the complaint cannot be substantiated.

False complaints

The available research indicates that false complaints are very rare and typically few in number.⁵¹⁵ The benefit of the doubt should be given to all complainants. An institution should respond by following its complaint handling policy until it completes an assessment or investigation demonstrating that the complaint is false.

False complaints by a child could indicate that the child is experiencing psychological or emotional difficulties.⁵¹⁶ For this reason, as part of its complaint handling process, the institution should try to ascertain the reasons for the child’s false complaint. Consideration should be given to working with parents, carers and counsellors to help address the underlying cause or causes of the complaint.

3.5.3 Investigating a complaint

An investigation – as we refer to it in this volume – is a formal and systematic inquiry to establish facts about a complaint of child sexual abuse. An investigation of a complaint of child sexual abuse may have different purposes, including:

- to identify whether there is evidence that the subject of the complaint may have committed a criminal offence (which is exclusively a matter for police and not the institution)
- to determine whether the subject of the complaint poses a risk to children’s safety, and if so what action needs to be taken by the institution to address this (that is, on a permanent basis rather than through temporary measures imposed after an initial risk assessment)
- to determine whether it is appropriate for the institution to commence disciplinary measures against the subject of the complaint (for example, if they have breached the institution’s code of conduct)
- to identify what circumstances caused or permitted the child sexual abuse to occur in the institutional context, and to determine what the institution needs to do to minimise risks to children’s safety in the future.

Every effort should be made to investigate each complaint. However, the level of investigation should be proportionate to the seriousness, frequency of occurrence and severity of the complaint.⁵¹⁷ The investigation rationale should be documented.

In this section, we identify who should investigate a complaint of child sexual abuse and how an investigation should be conducted. This includes a discussion of the differences between an institutional and criminal investigation. We provide guidance for institutions on what to do, and what not to do, when the police are investigating a complaint, the importance of procedural fairness, and how an institution can document the investigation of a complaint. We also provide some guidance on how institutions should implement outcomes of an investigation.

Who will investigate and how should an investigation be conducted?

Institutional investigation

An institution may investigate a complaint to determine:

- whether the subject of the complaint has breached the institution's code of conduct or another institutional or oversight body's policy or procedure
- whether the subject of the complaint poses a risk to children's safety
- what action, if any, is required.

This sort of investigation examines the circumstances of the complaint to determine all relevant facts and establish a documented basis for a decision regarding the appropriate response.

Where there is concern that the conduct associated with the complaint constitutes a criminal offence, the institution should consult the police or child protection authorities before starting its own investigation to ensure it does not compromise any criminal investigation. Where the police decide not to investigate the allegation, then the institution should confirm that the police have no objection to the institution initiating its own investigation before taking any steps to investigate.

Conduct that does not reach a criminal threshold but is still inappropriate and/or a breach of the institution's code of conduct, should be investigated by, or on behalf of, the institution. If any doubt exists about whether the criminal threshold has been reached, the allegation should be reported to the police.

The standard of proof required in an institutional investigation would usually be 'the balance of probabilities', meaning 'more probable than not'.⁵¹⁸ If the institution concludes that it is more probable than not that the conduct the subject of the complaint did occur, then it should find that the complaint has been substantiated.

In considering whether it is more probable than not that the conduct the subject of the complaint occurred, the institution should have regard to the principles in *Briginshaw v Briginshaw*.⁵¹⁹ According to these principles, in deciding whether the subject of the complaint has been proven on the balance of probabilities, the institution must take into account the seriousness of the allegation made and the gravity of the consequences flowing from a particular finding.⁵²⁰

The investigation should be carried out by an impartial, objective and trained investigator.⁵²¹ That person should have no conflict of interest with the proper investigation of the complaint⁵²² and should be someone whom the general community would perceive as objective.⁵²³ The investigator may be an employee of the institution, a contractor or an external investigator independent of the institution. Some institutions may use a combination of internal investigation resources and external investigators.⁵²⁴

The role of the investigator is to:⁵²⁵

- determine the terms of reference of the investigation
- collect and document evidence
- establish and document facts
- prepare a report of the investigation that details findings and makes recommendations.

An external investigator may be appointed if there is a potential or perceived conflict of interest. Their references should be checked to ensure they are qualified for the task.

Investigations may require gathering information from a range of sources, including by interviewing people who were involved in the alleged conduct or who saw or heard information relevant to the complaint.⁵²⁶ If it is necessary and appropriate to interview a child involved in a complaint,⁵²⁷ permission to do so should be sought from their parents or carers.⁵²⁸ Questioning of a child by a person without relevant specialist skills – for example, in child development, trauma-related behaviours, indicators of abuse and investigative techniques – could cause the child distress or trauma. The child's parents or carers, employees and volunteers of the institution, and the subject of the complaint could also be interviewed to obtain relevant information. Interviews with the child (if appropriate) and other persons should be conducted in a logical and appropriate sequence.⁵²⁹

The investigation process should be documented and reasons should be given for any findings or conclusions.⁵³⁰ Findings or conclusions should be supported with clear and relevant details and evidence. The investigator may make recommendations, which could include disciplinary or educative actions, or recommendations for redress. It is generally good practice for a person other than the investigator, such as a senior manager of an institution, to have responsibility for determining any outcomes in response to the investigator's recommendations.

A senior person within the institution should be appointed to oversee the investigation.⁵³¹ That person should be trained and skilled in monitoring an investigation.

Investigations should be performed in a timely manner.⁵³² Any concurrent criminal investigations will affect the timeliness of the institution's investigation. An institution should obtain advice from the police as to whether it may or should conduct its own investigation given the actions proposed by the police or other agencies. In the absence of criminal investigations, criminal proceedings or other special reasons, internal investigations should be completed within a relatively short time.⁵³³

The investigation procedures we have identified should be undertaken in a way that is proportionate to the complaint and the nature and characteristics of the institution. We acknowledge that small or under-resourced institutions may find it challenging to undertake or contract an institutional investigation. In these circumstances, the institution should seek guidance from its relevant peak or government oversight body on how to best manage an investigation within the limitations of its resources. Community-based institutions may also seek assistance from other institutions in their community to build their capacity to undertake an investigation.

Criminal investigation

A criminal investigation – or a forensic or law enforcement investigation – is an investigation conducted by the police, solely or in conjunction with child protection authorities, forensic medical experts and psychologists. It takes priority over other types of investigation. The aim of a criminal investigation is to establish evidence and facts for use in legal proceedings or purposes connected to these proceedings.⁵³⁴ The standard of proof required by a court of law in criminal proceedings is 'beyond reasonable doubt'.

A number of submissions to our consultation paper on complaint handling indicated institutions need to understand how to conduct investigations when police are involved and do so in a way that does not compromise a police investigation.⁵³⁵ In this regard, there are three important principles:

- The institution should cooperate fully with any police investigation.⁵³⁶
- The institution should not investigate the allegation without police agreement. Any investigatory steps taken by the institution might interfere with the police investigation or undermine possible criminal proceedings. If the institution considers urgent action is required for the safety of children, it should consult the police or child protection agency about the action.
- The institution should still undertake an initial risk assessment and conduct a systemic review or root cause analysis – even if it is not investigating due to police involvement – provided that these are undertaken in a manner that does not interfere with the police investigation. If the institution's staff or volunteers are potential witnesses in criminal proceedings, it may encounter some difficulties in taking these steps.

Where the police do investigate, there can be many reasons why criminal proceedings might not be initiated or why a conviction might be unsuccessful. These include:

- insufficient evidence existing of an offence having been committed
- sufficiently clear disclosures not being obtained from children in the police interviews
- the complaint being withdrawn because the complainant, or complainant's family in the case of younger children, chose not to participate in a prosecution
- the alleged offender not meeting all the technical requirements to be convicted of a criminal sex offence
- the charges against an alleged offender being withdrawn or, at trial, the accused being acquitted.

When a police investigation does not result in a conviction, the institution should discuss with the police a possible response by the institution itself. The police or complainant may agree to provide the institution with copies of statements or material that the institution could use in its own response.

We heard from Ms Trish Ladogna, Director, Child Wellbeing Unit about how an institutional investigation would proceed in these circumstances:

We would obviously rely on information that may have been discovered through the criminal investigation, if that was available to us. We would conduct interviews if we needed to, but hopefully not again, putting people through those processes again if we don't need to, and then make a decision about their employment ...⁵³⁷

The institution should understand the reasons for the outcome of any police investigation and determine the steps it should take to protect children. For example, if the police did not commence criminal proceedings because the family was unwilling to have their child participate in a criminal prosecution, the institution may need to act. Similarly, if the matter was referred to the police, but the victim did not want to disclose to the police, the institution would be responsible for conducting its own investigation. In addition, if the accused was convicted and then successfully appealed, the institution should not rely on the outcome to take no further action.

Procedural fairness

Institutions should comply with the requirements of procedural fairness when investigating a child sexual abuse complaint and determining outcomes. By observing procedural fairness, an institution manages risk properly, while also ensuring that it responds in a manner that is fair to affected parties and that its decisions cannot be challenged and set aside under the law. An institution's complaint handling policy should specify steps that will be taken to comply with the requirements of procedural fairness for both the victim and the subject of a complaint.

Procedural fairness, as developed in the context of decision-making by courts and administrators, has two aspects: the hearing rule and the bias rule. The hearing rule requires decision-makers to give a person whose interests may be affected a reasonable opportunity to respond to relevant matters adverse to their interests before a decision is made. Ordinarily, that will require that the person affected be put on notice of the nature and purpose of the investigation, the issues to be considered, and the nature and content of any information that might be taken into account in reaching a conclusion adverse to the affected party's interests. There are limits on the information the decision-maker is required to disclose.⁵³⁸

The second aspect of procedural fairness is the bias rule. A decision-maker is disqualified if a fair-minded, lay observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the matter under inquiry.⁵³⁹

There may be circumstances where the administrative rules of procedural fairness are informed by other constraints (for example, contractual obligations).

Good practice would require that non-government organisations respect the requirements of procedural fairness as developed in governmental decision-making contexts.

How will outcomes be implemented?

After the investigation has been completed, the institution should:

- decide the outcome of the complaint
- advise the victim and/or complainant of the outcome
- advise the person who was the subject of the complaint of the outcome
- provide ongoing support, including any necessary assistance from the institution and access to advocacy, support and therapeutic treatment services, and a safety plan for the complainant and family
- if a complaint of child sexual abuse has been substantiated and the complaint handling processes has concluded, refer to its redress policy and consider the relevant next steps (for example, an apology from the institution and/or compensation). For details on redress, see our *Redress and civil litigation* report.

- inform relevant agencies as required; for example, the ombudsman or children's guardian
- advise those in the community affected by the conduct.

During and at the end of the complaint handling process, the institution should debrief staff, parents, the child the complaint related to or other children involved, and any other affected parties. Other affected parties may include the wider institutional community, such as a church congregation or a school. Staff in institutions need to be aware that other children in the institution may have been sexually abused, but may not have disclosed or complained about it.

Documenting the complaint and investigation

Institutions should be aware of legal, contractual, professional and other obligations to document complaint handling, maintain records and provide access to those records.

Institutions should document all information taken in the complaint handling process,⁵⁴⁰ including:

- the name and contact details of the complainant, witness(es) and the subject of a complaint
- the date of the alleged misconduct
- the date of receipt of the complaint
- any contact with the complainant and the details of who contacted the complainant
- contact with witnesses
- contact with the subject of a complaint
- any reporting to external agencies
- demographic data (to help ascertain if any population groups are more vulnerable than others)
- information obtained during the investigation, including details of the complaint and witness statements
- the outcome of the investigation and the reasons given to the affected parties for the outcome
- the identity and position of the person responsible for overseeing the complaint, the author of the complaint record, the reason for their involvement and the date the record was made.

If the complaint involves a child in an out-of-home care placement, then the details of the complaint should be included on the child's state ward file.⁵⁴¹

Statutory documentation retention obligations should be followed, in particular if litigation is reasonably anticipated.⁵⁴²

Records should be stored securely and be safe from environmental damage. Records made with digital technology should be preserved so they can be retrieved in the future. Records should be stored and accessed in line with regulatory requirements.

Institutions' complaint handling policies should identify the employees who are permitted to access and share records, the reasons for and circumstances under which they can be accessed, and who has responsibility for the records. The complaint handling policy should note that records may need to be shared with, or be required by, other institutions, such as regulatory bodies or law enforcement agencies. It should also note that individuals whose personal information is contained in a record, including that of victims and the subjects of complaints, may also have a right to access such records under relevant legislation or policy (for example, the relevant freedom of information or privacy legislation).

For additional information on recordkeeping, see Volume 8, *Recordkeeping and information sharing*.

3.5.4 Providing support and assistance

Concern and support for the person who is making a complaint about child sexual abuse must be at the heart of an institution's response. Support is required throughout all stages of the complaint handling process – from the time of disclosure or the initial complaint until after an investigation has been completed and the complaint finalised and outcomes implemented.⁵⁴³ Support may include provision of advocacy or therapeutic treatment services.

Support for victims and survivors

Institutions should respond sensitively to the child victim or adult survivor of child sexual abuse and in a way that supports and protects their interests, rather than compounds harm. Such an approach is part of a 'trauma-informed' response. Research suggests that victims and survivors are best supported by institutional responses that are trauma-informed, humane, systemic and restorative.

Victims and survivors of child sexual abuse need institutions to help and support them throughout the complaint handling and investigation process by:

- reassuring them they did the right thing in disclosing and making a complaint and that they are not to blame for any abuse that has occurred
- taking steps to support them and promote their safety
- giving them opportunities to be supported by their family or other informal support networks
- explaining the likely complaint handling process, the people involved, the anticipated time frame and what will be required of the victim or survivor

- making sure personal information about the complainant is shared only on a 'need to know' basis with the relevant people in and external to the institution
- explaining the possible outcomes of a complaint, for example loss of employment for breach of code of conduct and/or criminal charges
- avoiding, where possible, making the victim or survivor repeat their account of what happened
- changing the victim's placement if the subject of the complaint is an out-of-home care carer or household member and the child is at risk of harm⁵⁴⁴
- communicating with the victim or survivor throughout the complaint handling process to give them updates on the investigation's progress, any resulting court proceedings and/or results of any other investigation. If the police are also investigating the matter, those matters should be communicated only in consultation with the police.

Support for the subject of a complaint

The institution should give support and assistance to the subject of a complaint in the form of:

- according procedural fairness, as discussed in Section 3.5.3
- explaining the process for managing the complaint, including anticipated timeframes and what will be required of them in the process
- clarifying the expectations of the subject of a complaint during the investigation – for example, making clear there is an expectation they not contact other children or staff members via social media, phone calls, letters or in person
- offering communication support – for example, if the subject of a complaint is a person with disability or requires access to a language interpreter
- keeping them informed about the progress of the complaint handling process
- offering the option of a support person⁵⁴⁵
- providing additional supports if the complaint is made against a child, including possible referral for therapeutic treatment and advising of support available for their affected family members
- making it clear that they are entitled to seek legal advice
- clarifying financial arrangements if they are an employee who is stood down pending the outcome of the investigation
- providing information about due process and rights of appeal
- providing information about any other supports available, including information about support available when a person who was suspended is cleared to return to work, which could include counselling, a phased return to work or providing a mentor.⁵⁴⁶

Support for parents and others affected by a complaint

Parents, carers, siblings and the children of victims and survivors of child sexual abuse can also be traumatised – sometimes for years – and are often referred to as secondary victims.⁵⁴⁷ Secondary victims may also require information, advocacy, support and therapeutic treatment as part of an institution's complaint handling process. In some circumstances, an entire cultural, church or school community might be affected and require support.

Access to advocacy, support and therapeutic treatment

When a complaint of child sexual abuse has been made, the institution should ensure that victims, the subject of a complaint and other affected parties can access advocacy, support and therapeutic treatment services. The institution may therefore have to resource, provide or arrange access to appropriate advocacy, support or therapeutic treatment services.

Advocacy requires an independent person or service to act on behalf of, or assist, an affected party to promote, protect and defend that party's rights and interests. Advocacy helps affected parties to express their needs, gain access to information, understand options and make informed decisions. Advocacy often takes the form of practical assistance to navigate the complaint handling process and service systems relevant to the affected party. Commissioned research suggests that children and young people with disability may benefit from an advocate to help them promote their interests.⁵⁴⁸

Support involves assisting affected parties with their emotional needs, such as reducing feelings of isolation and promoting connections and trusted relationships. Advocates often give support but other people or services can as well.

Therapeutic treatment for victims addresses the psycho-social impacts of child sexual abuse on victims and secondary victims, and the impacts of how a complaint is handled on all affected parties. Therapeutic treatment can include counselling, psychotherapy, body therapies, therapeutic groups, healing approaches,⁵⁴⁹ medication and psychiatric care. Provision of therapeutic treatment is usually the work of qualified or accredited professionals, such as psychologists, psychiatrists or social workers.

The institution should be aware of relevant services to which they can refer affected parties and may need to provide resources to affected parties so that they can use the services of external providers.

Services, such as advocacy, support or therapeutic treatment services should be responsive to the needs of all parties, including victims with disability, Aboriginal or Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds and victims who are in out-of-home care or are care leavers.

Advocacy, support and therapeutic treatment services for victims and secondary victims are dealt with in more detail in Volume 9, *Advocacy, support and therapeutic treatment services*. And in Volume 10, *Children with harmful sexual behaviours*, we consider interventions and treatment for children with harmful sexual behaviours.

In providing access to advocacy, support and therapeutic treatment for victims and survivors as part of a complaint handling process, institutions should:

- offer referral to any necessary medical treatment or psychological support and counselling⁵⁵⁰
- offer victims access to a trusted adult, independent support person or advocate to assist them
- proactively make referrals on behalf of the victim or survivor in situations where their psychological state or current capacities make it difficult for them to arrange their own appointments.

Advocacy, support and therapeutic treatment should also be offered to other affected parties, including:

- the person who made the complaint, if different from the victim
- family members and carers of the victim/s
- other staff members and volunteers at the institution affected by the complaint
- if applicable, other children who may have been placed at risk, and/or witnessed the incident(s), and their family members and carers
- other children at the institution who may be affected by changes implemented to manage risk
- other children in the care of the subject of a complaint and who may need to be removed from the person's care
- children who may have previously been in the care of the subject of a complaint.

In our consultations with multicultural stakeholders, institutions identified the need for restorative and healing approaches for the whole community following individual cases of child sexual abuse.⁵⁵¹ This whole-of-community approach was particularly important for cultural communities that have strong collectivist values.⁵⁵² Collective healing approaches are also critical to the range of services for Aboriginal and Torres Strait Islander communities. In Volume 9, *Advocacy, support and therapeutic treatment services*, we discuss healing approaches within the aims of our recommendations to achieve responsive service systems for survivors of child sexual abuse.

Employees involved in receiving, investigating and making decisions about a complaint should be supervised, both to provide support to those staff and as a quality control mechanism.

3.5.5 Achieving systemic improvements after a complaint

The creation of a child safe environment requires vigilance and necessitates paying attention to systemic issues. A complaint of child sexual abuse could indicate wider systemic child safety issues within an institution or that there may be deficiencies in its child safe approach.

Institutions should undertake a careful and thorough review of the initial complaint at the earliest opportunity, and then review the complaint outcome, to identify:⁵⁵³

- the root cause of the problem
- any systemic issues, including systemic failures
- any remaining organisational risk(s).

To assess immediate risk see Section 3.5.2 'Responding to a complaint'. Risk assessment should also consider cultural, operational and environmental risks using the Child Safe Standards we have identified in Chapter 3 of Volume 6, *Making institutions child safe* as a systemic framework.

As part of this process, institutions should consider how their policies and practices can be improved, and implement changes as required.⁵⁵⁴

Strategic risk assessment is an integral step in the complaint handling process for child safe institutions. Research we commissioned, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, attempted to conceptualise different levels of risk of child sexual abuse based on the characteristics and activities undertaken by institutions.⁵⁵⁵ This research proposed a risk typology to help assess child sexual abuse in an institutional setting. This typology, while untested, may help inform an institution as it undertakes its risk assessment. There are however a number of difficulties and limitations in any attempt to develop a risk typology. These limitations or difficulties are discussed in detail in the *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions* report.⁵⁵⁶

The proposed risk categories that follow apply to analysing both the victimisation and the perpetration of child sexual abuse. Accordingly, when an institution undertakes a risk assessment as a preventative step, or in response to receiving an immediate complaint of child sexual abuse, or at the finalisation of the complaint, the following types of risk dimensions may be considered:

- 'Situational risk' – meaning the opportunities for child sexual abuse to occur in the institutional environment. There are typically two elements to situational risk. One is exploiting opportunity to be alone with a child to facilitate grooming and/or moving from innocent relational behaviour to an unlawful sexual act. The second element is the opportunity to form a close relationship that could involve physical and/or emotional contact that precipitates crossing code of conduct boundaries to devolve into abusive behaviours.⁵⁵⁷

- ‘Vulnerability risk’ – meaning the population characteristics of children within the institution and subsequent structural vulnerabilities within the institution that manages these children. For example, children in out-of-home care environments may be more at risk of child sexual abuse than children participating in weekly community sport in an outdoor group setting.
- ‘Propensity risk’ – which acknowledges that there may be perpetrators of child sexual abuse within an organisation, and focuses on the staffing profile within the organisation to help mitigate risk.⁵⁵⁸ That said, it should be reiterated that ‘There is no one psychological profile for a person who sexually abuses children’.⁵⁵⁹
- Other ‘institutional risk’ – which can include a range of factors that may mean that child sexual abuse is more likely to occur. This includes factors that impair prevention efforts, situations where the organisational ethos is such that child protection is not given a priority, and organisational cultures (for example, disengaged leadership) that facilitate misconduct.⁵⁶⁰ The existence of these institutional risks make child sexual abuse more likely, or less likely, to occur.

Institutions may consider undertaking an internal case review, or employing an external expert or agency to offer an independent case review. A review should be underpinned by:

- a preventative, proactive and participatory approach that ensures that adults and children in the institution understand and have confidence in the institution’s child safety approach
- accountability for maintaining child safe policies and practices
- accountability for child safe policies and practices being communicated, understood and accepted at all levels of the institution including by staff, children’s carers and children involved in the institution.⁵⁶¹

When the need for improvement has been identified, the institution should be able to implement necessary changes and show the ways in which policies and practices have changed. For institutions serving children who are at risk, more vulnerable, or hard to reach, review and continuous improvement includes attention to the evolving evidence base in relation to the safety of all children, mindful of their individual characteristics, cultural backgrounds and abilities.

Recommendation 7.7

Consistent with Child Safe Standard 6: Processes to respond to complaints of child sexual abuse are child focused, institutions should have a clear, accessible and child-focused complaint handling policy and procedure that sets out how the institution should respond to complaints of child sexual abuse. The complaint handling policy and procedure should cover:

- a. making a complaint
- b. responding to a complaint
- c. investigating a complaint
- d. providing support and assistance
- e. achieving systemic improvements following a complaint.

Recommendation 7.8

Consistent with Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture, institutions should have a clear code of conduct that:

- a. outlines behaviours towards children that the institution considers unacceptable, including concerning conduct, misconduct or criminal conduct
- b. includes a specific requirement to report any concerns, breaches or suspected breaches of the code to a person responsible for handling complaints in the institution or to an external authority when required by law and/or the institution's complaint handling policy
- c. outlines the protections available to individuals who make complaints or reports in good faith to any institution engaging in child-related work (see Recommendation 7.6 on reporter protections).

Endnotes

- 1 Exhibit 47-001, 'Response to the Royal Commission prepared by Leisa Hart, CEO - YMCA NSW', Case Study 47, YMCA.0002.001.0001_R at 0036_R.
- 2 J Bessant, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016, pp 1–2; Victorian Disability Services Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016, p 6; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009*, Sydney, 2015, p 9.
- 3 J Bessant, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016, pp 1–2; Victorian Disability Services Commissioner, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, 2016, p 6.
- 4 Australian Institute of Health and Welfare, *Child Protection Australia 2014–2015*, Australian Government, Canberra, 2016, p 3.
- 5 Australian Institute of Health and Welfare, *Child Protection Australia 2014–2015*, Australian Government, Canberra, 2016, p 76 (Table A8).
- 6 See N Trocme & N Bala, 'False allegations of abuse and neglect when parents separate', *Child Abuse & Neglect*, vol 29, no 12, 2005. This paper documents the 1998 Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-98). This was the first national study that documented rates of intentionally false allegations of abuse and neglect investigated by child welfare services in Canada. The paper summarises the characteristics associated with intentionally false reports of child abuse and neglect within the context of parental separation. The authors considered the general rate of intentionally fabricated allegations to be four per cent. However, where custody of a child was disputed, they considered the false allegation rate to be much higher, at 12 per cent.
- 7 R Oates, DPH Jones, D Denson, A Sirotnak, N Gary & RD Krugman, 'Erroneous concerns about child sexual abuse', *Child Abuse & Neglect*, vol 24, no 1, 2000, pp 151–2.
- 8 R Oates, DPH Jones, D Denson, A Sirotnak, N Gary & RD Krugman, 'Erroneous concerns about child sexual abuse', *Child Abuse & Neglect*, vol 24, no 1, 2000, p 152.
- 9 R Oates, DPH Jones, D Denson, A Sirotnak, N Gary & RD Krugman, 'Erroneous concerns about child sexual abuse', *Child Abuse & Neglect*, vol 24, no 1, 2000, pp 151–2.
- 10 R Oates, DPH Jones, D Denson, A Sirotnak, N Gary & RD Krugman, 'Erroneous concerns about child sexual abuse', *Child Abuse & Neglect*, vol 24, no 1, 2000, p 154.
- 11 N Trocme & N Bala, 'False allegations of abuse and neglect when parents separate', *Child Abuse & Neglect*, vol 29, no 12, 2005, p 1340. It should be noted that this study was concerned with familial abuse not institutional child sexual abuse.
- 12 N Trocme & N Bala, 'False allegations of abuse and neglect when parents separate', *Child Abuse & Neglect*, vol 29, no 12, 2005, p 1340 (Table 4).
- 13 DM Fergusson, LJ Horwood & LJ Woodward, 'The stability of child abuse reports: A longitudinal study of the reporting behaviour of young adults', *Psychological Medicine*, vol 30, no 03, 2000.
- 14 For examples, see *School Education resources guidelines for managing complaints, misconduct and unsatisfactory performance in the teaching service*, State Government of Victoria, Melbourne, 2015 and Victorian Department of Education and Training, *Human Resources Guidelines for Managing Complaints, Misconduct and Unsatisfactory Performance - Public Service*, State Government of Victoria, Melbourne, 2015.
- 15 For examples, see *Children (Detention Centres) Regulation 2010* (NSW) r 48; *Youth Justice Act 1992* (Qld) ss 267(1)(c), 277; *Children Youth and Families Act 2005* (Vic) s 482(2)(e).
- 16 For example, see *Government Sector Employment Rules 2014* (NSW) Pt 8.
- 17 *Child Protection Regulation 2011* (Qld) r 7.
- 18 See, for example, *School Education Act 1999* (WA) s 159(1)(k) and Government of Western Australia, *Guide to the registration standards and other requirements for non-government schools*, Department of Education Services, Western Australia, Osborne Park, 2016, pp 43–5; *Education Act 2016* (NT) s 125(q); *Education (Accreditation of Non-State Schools) Act 2001* (Qld) s 9 and *Education (Accreditation of Non-State Schools) Regulation 2001* (Qld) s 10.
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4 Oversight of institutional complaint handling

4.1 Overview

Independent oversight is important in addressing problems that arise in the way institutions handle complaints about child sexual abuse and encourages improvements in institutional complaint handling through training, education and guidance.

Independent oversight can help institutions better identify and manage risks to children. It can improve institutions' competency, transparency and accountability in complaint handling, and help create a consistent standard of practice across sectors. Further, independent oversight can assure the public that the institutions entrusted to care for children cannot minimise or ignore complaints, and that the leaders and employees of these institutions cannot operate with impunity.

We recommend that such oversight operate through national implementation of legislative reportable conduct schemes. Reportable conduct schemes oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees and for the oversight body to monitor institutions' investigation and handling of allegations.

This chapter examines and makes recommendations about the key elements of such reportable conduct schemes and about the types of institutions they should cover.

Independent oversight of complaint handling complements other regulatory schemes that contribute to making institutions child safe, including Working With Children Checks (see our *Working With Children Checks* report);¹ Child Safe Standards (see Volume 6, *Making institutions child safe*); mandatory reporting to child protection authorities and other reporting to external authorities (see Chapter 2, 'Reporting institutional child sexual abuse to external authorities'); and information sharing arrangements (see Volume 8, *Recordkeeping and information sharing*).

4.2 Need for independent oversight

The need for independent oversight of institutional complaint handling was documented in the Final Report of the Royal Commission into the New South Wales Police Service (Wood Royal Commission) in 1997.² The Royal Commissioner, Justice James Wood, found that conflicts of interest and other issues arose when institutions investigated complaints of child abuse made against their staff or volunteers:³

History has shown that there are problems in leaving internal investigations to the employing agency. They suffer from conflicting staff loyalties, they discourage internal informants, they run into problems of institutional bias and self-protection, and they are not perceived as open, transparent or impartial. For this reason, the Commission considers it desirable in any new system to make provision for independent investigation of this kind of allegation.⁴

In a submission to our inquiry, the Commission for Children and Young People, Victoria, explained why independent oversight of employee-related child sexual abuse allegations is necessary:

Allegations of sexual abuse are very challenging to investigate given their nature and the heightened sensitivity for all those involved. There is a need for specialist expertise in understanding not only child development and the nature of sexual abuse, both the behaviour of offenders and the impacts on the victim, but also forensic investigation techniques. The handling of allegations ... therefore requires a range of skills and careful assurance that the voice of the child is privileged over the interests of the organisation and its staff. For this reason, independent oversight of the process is very important to prevent conflict of interest occurring when a ... departmental agency is put in the position of investigating itself.⁵

In our case studies and private sessions we have consistently heard about problems with the ways in which institutions have responded to complaints of child sexual abuse. The means to address these problems are to ensure that institutions have complaint handling policies and procedures consistent with Recommendations 7.7 and 7.8.

However, simply leaving institutions to handle complaints on their own might not result in the best outcomes for children. In addition to training, education and guidance, independent oversight of some types of institutions might help address a range of problems with the way institutions handle complaints about child sexual abuse.

4.2.1 Mishandling of complaints

We have heard of many instances where an institution's response to a complaint was mishandled and was ineffective or inadequate.⁶ We have seen evidence that some institutions have dismissed, minimised or ignored complaints.⁷ The mishandling of complaints has meant that, on occasion, allegations of child sexual abuse were not properly investigated and children were not adequately protected.⁸

As discussed in Chapter 3, the mishandling of complaints has a range of causes. They include poor leadership, governance and culture; inadequate and inaccessible complaint handling policies and procedures; inadequate education and training on complaints; inadequate support and advice (see Section 4.2.3); poor investigation standards; insufficient communication with affected parties; and inadequate implementation of risk assessment and ongoing review.

An independent oversight body, by monitoring investigations and providing advice to institutions on complaint handling, can help address many of these problems.

4.2.2 No reporting to external government authorities

We heard that some adults associated with institutions did not report known or suspected child sexual abuse to law enforcement agencies, child protection departments and other government authorities.⁹ This happened both in circumstances where adults associated with the institution were legally obliged to report and where they were not so obliged, but could have reported voluntarily to reduce risks to children. Problems in compliance with reporting obligations are discussed in more detail in Chapter 2.

An independent oversight body can encourage reporting by giving staff and volunteers in institutions a direct reporting pathway that does not require them to advise the head of the institution of their concerns.

An independent oversight body, through its monitoring and advice functions, is also able to ensure that institutions report appropriately to other external authorities, including police and child protection authorities.

4.2.3 Inadequate support and advice

A significant factor contributing to the mishandling of child sexual abuse complaints is that some institutions have inadequate access to support and advice about how best to handle complaints. Institutions particularly likely to require support and advice include those that:¹⁰

- are small or under-resourced
- operate in new and emerging sectors
- do not have the support of a peak body
- have little or no experience with handling complaints of child sexual abuse.

We were told in stakeholder consultations that institutions, their employees and their volunteers would welcome more assistance and guidance in developing and implementing complaint handling policies and procedures.¹¹ Institutions need guidance about responding to complaints that also result in a police investigation. In particular, institutions are looking for guidance on:¹²

- what the institution should and should not do while the police are investigating
- how the institution should handle the subject of the complaint during the investigation
- what level of interaction or communication the institution should expect from the police
- what the institution should do if the complaint does not result in criminal charges or a conviction.

An independent oversight body can help capacity building and practice development in these matters by providing training, education and guidance to institutions.

4.2.4 Inconsistent oversight of institutional complaint handling

Oversight of institutional complaint handling is inconsistent across Australia. Many institutions are not subject to any independent oversight in this area. Children can receive differing levels of protection and care when child sexual abuse occurs, depending on their circumstances and geographic location. According to the Australian Capital Territory Government:

Inconsistencies between jurisdictions regarding the levels of oversight provided to employees, creates difficulties in identifying risks to children and young people. These inconsistencies also frustrate organisations that provide services for children and young people across state and territory borders.¹³

Numerous oversight bodies monitor aspects of child welfare, in particular the welfare of children in care and protection systems. They include ombudsmen's offices, reportable conduct schemes, community visitor schemes, child advocates and children's guardians, children's commissioners, and crime and misconduct commissions. These oversight bodies and mechanisms vary in presence, nature, scope and power. Their oversight capacity ranges from broad oversight of particular systems – for example, the Australian Capital Territory Children and Young People's Commission oversees the territory's child protection system – to narrow oversight of particular environments, contexts or processes, such as community visitor schemes in out-of-home care.

Some Australian state and territory governments have limited oversight of child protection matters. Research conducted for the Royal Commission found ‘there is no clear picture of these oversight bodies having frequent or wide-ranging engagement with matters concerning child sexual abuse in institutional contexts’ across Australia:¹⁴

State and territory governments inevitably invest more heavily in some agencies than in others. This means that some of these bodies have features and resourcing which at least nominally enable greater oversight of institutions in the context of child sexual abuse ... Other localised factors and resource constraints also likely influence the choice of priority areas of oversight, and actual capacity to implement oversight powers. In addition, the capacity of those oversight bodies which operate more on the individual level of child interaction may be limited by impediments such as the difficulty children have with disclosing sexual abuse.¹⁵

In jurisdictions that do not have a reportable conduct scheme, there is no cross-sector oversight of institutional reporting of, and responses to, complaints of child sexual abuse. In some jurisdictions, sector-specific mechanisms might oversee concerns about child protection that arise in institutional settings; in others, oversight of this kind is minimal, as the following examples show:

- In Queensland, regulation and oversight of employee-related child protection matters is sectoral and multiple bodies can have roles in the same sector. In the schools sector, for example, the Department of Education and Training, the Non-State Schools Accreditation Board and the Queensland College of Teachers all play a role in the regulation and oversight of employee-related child protection matters.
- In Tasmania, oversight of institutional complaint handling is limited. The Ombudsman Tasmania and the Tasmanian Integrity Commission (which oversees investigations of misconduct by public officials) rarely engage in child protection matters.¹⁶ The Tasmanian Commissioner for Children and Young People does not have jurisdiction over child protection matters.¹⁷

In some cases, government bodies or statutory position holders oversee some aspects of child protection matters,¹⁸ as in South Australia and the Northern Territory:

- In South Australia, all allegations of child sexual abuse in out-of-home care are reported to the Guardian for Children and Young People, who keeps a record of matters and engages on these matters with the police and the Care Concerns Investigation Unit of the Department for Education and Child Development.¹⁹
- In the Northern Territory, the Children’s Commissioner has a limited oversight role in the out-of-home care sector. The Northern Territory Department of Children and Families must notify the Children’s Commissioner of all cases where a complaint of child sexual abuse in out-of-home care has been substantiated.²⁰ The department is not required to notify the Children’s Commissioner of cases where a complaint of child sexual abuse has not been substantiated.²¹

Some jurisdictions rely on internal mechanisms, such as those in large government departments, to handle complaints of child sexual abuse made against staff or volunteers.²² These units are generally not subject to any independent, external oversight. In contrast, in New South Wales, specialised reportable conduct units have been established in large government departments and are subject to the NSW Ombudsman's independent oversight.²³

4.2.5 Benefits of independent oversight

Independent oversight addresses some problems with institutional complaint handling. It can improve the competency, transparency and accountability of institutions in handling complaints. It also helps create a consistent standard of practice across sectors. Independent oversight helps to:

- increase identification and reporting of institutional child sexual abuse
- improve the capacity of institutions to receive and respond to complaints
- strengthen institutions' accountability and transparency in accordance with best practice complaint handling
- ensure the risk of child sexual abuse is adequately addressed
- improve the welfare and wellbeing of primary and secondary victims
- promote consistent standards in reporting and responding across institutions.

Independent oversight also helps to ensure that allegations of institutional child sexual abuse or other relevant misconduct come to the attention of the regulatory system and, if appropriate, the criminal justice system. This is important for preventing, investigating and punishing institutional child sexual abuse not only in the interests of particular victims but also in the interests of the community as a whole.

4.3 Oversight through reportable conduct schemes

In Australia, the only model for independent oversight of institutional responses to complaints of child abuse and neglect across multiple sectors is known as a reportable conduct scheme. Such schemes oblige heads of certain institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees. The schemes also oblige the oversight body to monitor institutions' investigation and handling of allegations. Conduct that is reportable generally includes abuse or neglect of a child, including sexual abuse, physical abuse or psychological abuse.²⁴ According to research, the schemes:

aim to overcome malfeasance and conflicts of interest where agencies investigate child sexual abuse allegations against their own staff, and instead seek to create a culture of integrity, transparency, and accountability to external independent oversight.²⁵

The only reportable conduct scheme in full operation during the period of this inquiry was in New South Wales. In July 2017, schemes began in Victoria and the Australian Capital Territory. The following section describes the New South Wales scheme and aspects of its operation that were highlighted in our case studies and consultations.

4.3.1 New South Wales reportable conduct scheme

Until 2017, New South Wales was the only jurisdiction to have implemented a reportable conduct scheme. The New South Wales scheme was implemented in 1999 in response to a recommendation of the Wood Royal Commission to expand the NSW Ombudsman's jurisdiction to oversee certain types of child-related employment and child abuse allegations.²⁶ The scheme is administered by the NSW Ombudsman under Part 3A of the *Ombudsman Act 1974* (NSW).²⁷

The institutions covered by the scheme include government and non-government institutions, which are referred to as 'agencies' under the legislation (throughout this chapter, the terms 'agency' and 'institution' are used interchangeably).²⁸ Designated government agencies include the Department of Education, Ministry of Health, parts of the Department of Justice administering youth detention and juvenile justice, and parts of the Department of Family and Community Services.²⁹ Designated non-government agencies include non-government schools, childcare centres, out-of-school-hours care centres, agencies that provide children with substitute residential care and affiliated health organisations.³⁰

Under the scheme, the head of an agency must notify the Ombudsman as soon as practicable and within 30 days of any reportable allegation or reportable conviction of which they become aware.³¹ The head of an agency must also take steps to require employees to notify them of any reportable allegation, or reportable conviction, of which an employee becomes aware.³²

A reportable allegation means 'an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct'.³³ Reportable conduct is defined as any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child (including a child pornography offence or an offence involving child abuse material).³⁴ It also includes any assault, ill-treatment or neglect of a child or any behaviour that causes psychological harm to a child.³⁵

The NSW Ombudsman defines sexual misconduct as including misconduct that crosses professional boundaries, sexually explicit comments and other overtly sexual behaviour, and grooming behaviour.³⁶ A reportable conviction is defined as a conviction or a finding of guilt of an offence involving reportable conduct, including those occurring outside New South Wales.³⁷

Under the Ombudsman's definition of reportable conduct, there is no time limit on when the relevant conduct occurred.³⁸ Reportable conduct includes the historical or contemporary conduct of any current employee of an agency. However, in *Case Study 51: Institutional review*

of Commonwealth, state and territory governments (*Institutional review of Commonwealth, state and territory governments*), Mr Michael Coutts-Trotter, Secretary, NSW Department of Family and Community Services, said that the focus of the scheme is on providing transparency, accountability and a rapid response to recent incidents.³⁹

Under the scheme the NSW Ombudsman may monitor the progress of any reportable conduct investigation by a designated agency and request relevant information from the agency head concerned.⁴⁰ Heads of agencies must provide a copy of the investigation report to the Ombudsman and advise the Ombudsman of resulting or proposed action in response to the investigation's findings.⁴¹ The Ombudsman may provide the agency with non-binding recommendations for action to be taken.⁴² The Ombudsman also has the power to undertake direct investigations concerning reportable conduct allegations, or any inappropriate handling of, or response to, a reportable allegation or conviction.⁴³

In addition to overseeing reportable conduct investigations, the Ombudsman must 'keep under scrutiny' the systems that designated agencies have in place for preventing their employees engaging in reportable conduct,⁴⁴ and for handling and responding to reportable allegations and reportable convictions involving those employees.⁴⁵

One way the Ombudsman fulfils this responsibility is by auditing child protection policies and procedures to help agencies improve their systems and practices. Heads of agencies are given feedback, including on areas of good practice and areas for improvement.

The New South Wales reportable conduct scheme complements the Working With Children Checks system. The Ombudsman may disclose to the New South Wales Children's Guardian any information about an employee of a designated agency that the Ombudsman believes may cause the employee to become a disqualified person for the purposes of a Working With Children Check, together with information about investigations into the relevant reportable conduct.⁴⁶ This may result in a person's Working With Children Check clearance being cancelled.

The scheme works with, and is enabled by, information sharing provisions in New South Wales. Under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), the NSW Ombudsman can share information it receives about persons subject to reportable conduct investigations with designated agencies and other public bodies, including the New South Wales Children's Guardian and the NSW Police Force.⁴⁷ The Ombudsman can also advise designated agencies undertaking investigations into their employees to seek further information from other agencies that could assist with an investigation.

In 2014, a separate 'reportable incident' scheme for the protection of people with disability was established under Part 3C of the *Ombudsman Act 1974* (NSW).⁴⁸ There is some overlap between the NSW Ombudsman's reportable incident (disability) and reportable conduct (child protection) jurisdictions, in relation to children with disability.

Interaction with the criminal justice system

The NSW Ombudsman and the NSW Police Force have developed standard operating procedures that specify steps for police to follow when responding to matters that fall under the New South Wales reportable conduct scheme to ensure agencies are given the information they require to manage the allegation.⁴⁹ According to the Ombudsman, the standard operating procedures give agencies a ‘guarantee of service in relation to the ongoing support and advice Police should provide’.⁵⁰ For example, if the matter is to be investigated by the police, the standard operating procedures state the agency should be given:⁵¹

- the contact details of the investigating officer
- expected timeframes for updates
- advice as to whether the employee can be advised of the nature of the allegations
- advice as to whether the employee can be informed of the police investigation
- any known information relating to the safety, welfare or wellbeing of a particular child or young person if the investigating officer believes that supplying the information would assist the employing agency to manage any risk to such persons.⁵²

If a reportable allegation involves a criminal matter, the Ombudsman will usually assign a principal investigator to the matter.⁵³ The investigator is responsible for liaising with: the NSW Police Force about the progress of investigations; the New South Wales Children’s Guardian where information indicates that an employee poses a risk to children; and the agency about what the agency should and should not do over the course of the matter.⁵⁴

In consultations we heard about an investigation undertaken by the NSW Department of Education in a case where the police did not bring charges against the subject of the complaint. According to Ms Trish Ladogna, Director, Child Wellbeing Unit:

Where there is no criminal investigation and it is a reportable conduct matter against our employee, then our Employee Performance and Conduct Unit would commence an investigation in relation to the conduct of that employee within the workforce and work with the Ombudsman about what would happen in relation to substantiating or not substantiating those allegations.

We would obviously rely on information that may have been discovered through the criminal investigation, if that was available to us. We would conduct interviews if we needed to, but hopefully not again, putting people through those processes again if we didn’t need to, and then make a decision about their employment ...⁵⁵

The Ombudsman advises heads of agencies to apply the balance of probabilities threshold to investigations into reportable allegations. This threshold is lower than the ‘beyond reasonable doubt’ threshold which is applied by the criminal justice system to establish whether alleged conduct occurred. The lower threshold allows heads of agencies to take action against employees on the basis of a sustained finding made under the scheme, even where the allegation does not result in a conviction.

When the police do not take action in response to a report of child sexual abuse, based on the evidence available or for any other reason, the Ombudsman can record and share information relevant to the allegation with those in a position to act – for example the head of the relevant agency or the NSW Office of the Children’s Guardian – to promote the safety of children. In this way, the scheme helps to identify individuals who pose a risk to children, but do not have a criminal record, and exclude them from working with children.

Investigations

Under the New South Wales reportable conduct scheme, agencies do not have an express legislative duty to investigate a reportable conduct allegation, but it is a matter of practice that agencies do investigate.⁵⁶ In *Case Study 38: Criminal justice issues relating to child sexual abuse in an institutional context (Case Study 38 in relation to criminal justice issues)*, Mr Steven Kinmond, NSW Deputy Ombudsman, told the Royal Commission that he had ‘yet to see a matter where an agency has told us in relation to a matter of substance that they are not going to investigate it’.⁵⁷

In our *Institutional review of Commonwealth, state and territory governments* case study, Mr Coutts-Trotter agreed that one of the benefits of the New South Wales reportable conduct scheme is that it requires institutions that come under the scheme to have robust complaint management systems in place.⁵⁸ The scheme guides institutions on responding to complaints of child sexual abuse, including reporting requirements and investigative practice.⁵⁹

The Australian Capital Territory Government submitted to us that:

In NSW, additional oversight provided by the reportable conduct scheme has provided organisations with additional certainty regarding when and how an investigation of employee conduct should proceed, including any obligation they have to report an incident under legislation (e.g. criminal or child protection matters).⁶⁰

In *Case Study 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay (Parramatta Training Schools for Girls)* Ms Valda Ruis, Chief Executive, New South Wales Juvenile Justice, described how the scheme worked in practice to provide independent review of Juvenile Justice’s investigation of an incident at one of its facilities:

we of course investigated, informed the Ombudsman. We had the person removed during the investigation, which took quite a long time. In the end – we had an external investigator do it; we don't do them internally – it was found to be not sustained. The Ombudsman then – whenever we do an investigation like that, the Ombudsman has to review our process and our findings, and they supported our finding ...

Because we're an allegation-based system, as soon as we get an allegation, we investigate it thoroughly and notify the Ombudsman, who independently investigates – well, they review our investigation.⁶¹

Ms Rusis also explained that generally New South Wales Juvenile Justice sets a 12-week timeframe for investigations, but the length of time required depends on how many people need to be interviewed.⁶²

Monitoring investigations

In our report on *Case Study 14: The response of the Catholic Diocese of Wollongong to allegations of child sexual abuse, and related criminal proceedings, against John Gerard Nestor, a priest of the Diocese (Catholic Diocese of Wollongong)* we described how the Diocese's investigation was monitored by the NSW Ombudsman.

In September 2006, the Ombudsman decided the allegations against Nestor were reportable and that these allegations should be investigated in accordance with the investigation provisions in the Ombudsman Act [*Ombudsman Act 1974 (NSW)*]. On 22 September 2006, Sister [Moya] Hanlen [Chancellor, Catholic Diocese of Wollongong] confirmed in writing to the Ombudsman's office that the Diocese would comply with its obligations under Part 3A of the Ombudsman Act. The Ombudsman opted to monitor the Diocese's investigation under section 25E of the Ombudsman Act.

In January 2007, the Diocese formally appointed external investigators, Kamira Stacey Consulting (Kamira Stacey), to conduct the investigation under the Ombudsman Act ... The investigation included contacting and interviewing complainants, putting the allegations they had investigated to Nestor and giving him the opportunity in writing and in a recorded interview to respond in detail.

...

Kamira Stacey presented its final report in May 2008. Ultimately, Kamira Stacey investigated four allegations, which were documented in the final report. Three of these allegations concerned complaints made by purported victims of indecent or sexual assault by Nestor. On the balance of probabilities, Kamira Stacey concluded that one of these allegations was not sustained and the other two were [sustained]...

...

The fourth allegation concerned Nestor engaging in a pattern of sexual misconduct during about 1989 to 1993. This allegation was sustained.

On 4 June 2008, Sister Hanlen gave Kamira Stacey's final report to the Ombudsman on behalf of Bishop Ingham. The Ombudsman had previously told the Diocese that the Diocese was required under the Ombudsman Act to, among other things, form its own view on whether it accepted the recommendations of the Kamira Stacey report and to notify Nestor and the Ombudsman of this.

On 12 June 2008, Bishop Ingham wrote to Nestor and told him that, after studying the Kamira Stacey report, he had reached a preliminary finding that three out of the four allegations were sustained. He gave Nestor the opportunity to respond to him. Nestor responded by letter on 29 June 2008 asking that Bishop Ingham reconsider his findings on the sustained allegations and giving reasons why Bishop Ingham should reconsider those findings.

On 19 August 2008, after considering Nestor's response of 29 June 2008 to his preliminary finding, Bishop Ingham notified Nestor that he had reached the same finding that he had originally. Sister Hanlen gave a copy of this correspondence to the Ombudsman.

...

On 21 October 2008, the Ombudsman advised that they were satisfied that the Diocese had handled the matter appropriately and that they would now close the file.⁶³

During the *Catholic Diocese of Wollongong* public hearing, Sister Hanlen spoke about her understanding of why the Ombudsman decided to monitor the Diocese's investigation of child sexual abuse complaints made against Nestor. She stated:

The Ombudsman's Office actually indicated that they would like to monitor the process. It is within their competence to have oversight of processes, but they can choose to monitor a process, which means that they actually keep a much closer eye on it and you have to report to them in the process of the process, so to speak; it's not a matter of you undertaking an investigation and forming a judgment and then reporting that to the Ombudsman's Office. In this case, they chose to monitor it.⁶⁴

When asked why the Ombudsman elected to formally monitor the Diocese's investigation, Sister Hanlen stated that:

I did understand from the Ombudsman's Office that they saw it as a rather complex case. It had gone over a number of years, with breaks from time to time. There had been church involvement. So they saw it as quite complex, I think.⁶⁵

Institutional knowledge and skills

In *Case Study 10: The Salvation Army's handling of claims of child sexual abuse 1989 to 2014*, Mr John Greville, a senior investigator at the Professional Standards Office of The Salvation Army, gave evidence about what knowledge and skills he considered 'would be needed to really make a proper assessment about whether a file contained matters which should be reported to the ombudsman':⁶⁶

you would need to have sufficient knowledge of part 3 of the Ombudsman Act insofar as it relates to notifications. You would need to have an appreciation of precedent offences, of the types of behaviour and criminal acts. You would need to know what the delegated authority is in terms of who is required to report, to when [sic] and the time frames. And part of that process is you would need to conduct an investigation, because once you notify the ombudsman, you have 30 days to give them an outcome, generally speaking. So you need to be sufficiently skilled to conduct a proper investigation, do your own findings, of course, but also report that to the ombudsman's office, because it is their role to keep under scrutiny our systems.⁶⁷

In *Case Study 41: Institutional responses to allegations of the sexual abuse of children with disability (Disability service providers)*, Ms Margaret Bowen, CEO, Disability Trust, stated she experienced a lot of difficulty conducting an internal investigation of an alleged incident for purposes of the scheme. She noted her lack of experience with investigations and her confusion navigating the process:

I just really – I remember thinking this is very hard for somebody that doesn't have a background first of all in investigation, but, secondly, in weighing things up in a way that is fair and reasonable. It just sort of created a nexus of uncertainty that I felt, and I didn't know – quite honestly, I didn't know how to get through the process and at that stage I was feeling quite concerned that there was no right way, that there was no – nothing clear. That was how I felt at that point in time.⁶⁸

Data collection and recordkeeping

The New South Wales reportable conduct scheme facilitates data collection by the Ombudsman about institutions and individuals, which is seen by stakeholders as helping to identify and respond to current risks to children and improve institutional responses.⁶⁹ The scheme collects information:

- about the alleged victim, complainant, co-complainants, head of the designated agency and the subject of the allegation
- about the allegation, including the agency's response, whether the allegation was sustained and whether the allegation was reported to the police or Family and Community Services
- about the outcomes of any criminal proceedings
- related to victim support.⁷⁰

Review of this information assists the Ombudsman and institutions in particular sectors to identify patterns and trends. It helps institutions evaluate the efficacy of certain child protection strategies and identify areas of risk.⁷¹ The Ombudsman can also identify sectors and institutions with low reporting rates that might need more help with capacity building to increase compliance.

The scheme provides a valuable source of data on child sexual abuse in the out-of-home care sector. Data collected includes the type of allegation, findings of the agency's investigation, details of witnesses, risk rating, details of reporting to child protection authorities and the police, whether the child was removed from the placement and any action taken against the alleged abuser.⁷² The Aboriginal Child, Family and Community Care State Secretariat (AbSec) told us that in discussions with its member agencies about the scheme:

The collection and sharing of key data across the sector was largely seen as an important element in keeping kids safe and driving ongoing practice improvement in this area, both at the agency and sector level.⁷³

The scheme encourages better recordkeeping by institutions.⁷⁴ The New South Wales Government submitted that:

The Ombudsman requires public and private organisations delivering service to children to keep records that demonstrate how they have responded to a reportable allegation or conviction against an employee. The Ombudsman will refer to those records when assessing or auditing the quality of an organisation's investigations.⁷⁵

Although data collection and recordkeeping are a strength of the scheme, we also heard that improvements could be made in both of these areas. Data collection and analysis need to be improved to determine if children are becoming safer.⁷⁶ Better data collection and analysis is also needed to inform system design.⁷⁷ Data also needs to be better utilised to improve the Ombudsman's and agencies' understanding of relevant practices across sectors – for example, to identify individual schools and school clusters that might not be meeting their obligations.⁷⁸

AbSec told us that some of its member agencies:

wanted to see further improvements in the collection and analysis of data in partnership with the Aboriginal sector with respect to the safety of Aboriginal children and young people, reflecting our commitment to data-driven system design and practice.⁷⁹

Information sharing

The New South Wales reportable conduct scheme facilitates information gathering and sharing, and cooperation and collaboration between institutions in New South Wales, in a way that promotes the safety of children.⁸⁰

Under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), the NSW Ombudsman may access information from other prescribed bodies about risks to child safety. The Ombudsman also has access to the NSW Police Force Computerised Operational Policing System database and Family and Community Services Key Information and Directory System database. This access allows the Ombudsman to ‘identify intra and inter agency practice weaknesses, including a failure by agencies to proactively share information’.⁸¹ We heard that these features give the Ombudsman a ‘helicopter’ view of relevant information.⁸²

According to the former New South Wales Commissioner of Police, Mr Andrew Scipione, the Ombudsman refers around 400 matters to the police each year for investigation, many of which result in prosecution.⁸³ Commissioner Scipione stated that the Ombudsman plays an important role in bringing agencies together and ‘ensuring that critical information is provided, understood and actioned’.⁸⁴ He said that the Ombudsman is the only New South Wales government agency with access to all key sources of child protection information, and that it is proactive in identifying risks and sharing information.⁸⁵

In a submission, the Truth, Justice and Healing Council also observed that:

One of the risks in child protection is that perpetrators can move from an area or jurisdiction of high scrutiny to an area of lower scrutiny. The NSW Ombudsman’s ability to share information with the Children’s Guardian assists in reducing this opportunity in NSW ... The access that the NSW Ombudsman has to both policing matters and employment matters is significant. The capacity of the Ombudsman to collate and link information about people against whom findings have been made leads to a [sic] much safer outcomes for children in NSW.⁸⁶

According to Mr Paul Davis, Director, Office of Safeguarding and Professional Standards, Parramatta Diocese, Catholic Church, one of the benefits of the Ombudsman’s role as a facilitator of information exchange is that agencies ‘look creatively at ways that information might be exchanged to support the child and to support or facilitate the execution of investigation processes’.⁸⁷

Prevention and early detection of institutional child sexual abuse

A strength of the New South Wales reportable conduct scheme is that it enables prevention and early detection of child sexual abuse by assisting institutions to identify high-risk situations and employees.⁸⁸ It enables prevention through information gathering; access to the NSW Police Force, departmental child protection databases and the NSW Carers Register; and information sharing with other agencies.

There are still challenges in ensuring that information sharing – particularly between government bodies and non-government designated agencies – facilitates prevention and early detection.⁸⁹

For example, if a report is made to child protection authorities about the conduct of a non-government out-of-home care employee towards a child, and this report does not meet the ‘risk of significant harm’ threshold,⁹⁰ the out-of-home care agency may not find out about the allegation. This is problematic because, ideally, the agency should report the allegation to the Ombudsman as reportable conduct and undertake an internal investigation. According to the Association of Children’s Welfare Agencies, this situation is a ‘complex communication exercise’.⁹¹ Mechanisms are needed to share information and investigate matters that fall below the risk of significant harm threshold.⁹²

Stakeholders suggested to us in consultations that the New South Wales reportable conduct scheme could be improved through more efficient, faster and streamlined information sharing between the Ombudsman and agencies, and between agencies.⁹³ AbSec submitted that there is ‘a sense that improvements in the timely exchange of information need to be made’.⁹⁴

More generally, there is also a need for national consistency in information sharing legislation to improve the operation of reportable conduct schemes.⁹⁵ This would better enable oversight bodies administering reportable conduct schemes in different jurisdictions to share information. Detailed discussion and recommendations in relation to information sharing is contained in Volume 8, *Recordkeeping and information sharing*.

Increased collaboration and cooperation

The New South Wales reportable conduct scheme is seen as promoting a shared responsibility between agencies for the protection of children. According to stakeholders who come under the scheme, it has resulted in collaboration between sectors to discuss employee-related risks to children and develop best practice in complaint handling.⁹⁶ In consultations with the Royal Commission, Mr Kinmond, NSW Deputy Ombudsman, told us that the Ombudsman facilitates collaborative practice in relation to reportable conduct matters.⁹⁷

Representatives from government, independent and Catholic schools said that the scheme had facilitated consistency across the three education sectors and ongoing dialogue with other sectors and agencies about enhancing child protection practices.⁹⁸

According to the former New South Wales Commissioner of Police, Mr Andrew Scipione, a strength of the scheme is:

how it works to promote us all working together on tackling serious child abuse by those who are meant to support and care for children. A number of sectors and agencies have spoken of the benefits ... the strong business relationship between Police and the Ombudsman has in driving outcomes in this complex and critical area of practice.⁹⁹

In our *Institutional review of Commonwealth, state and territory governments* case study, Ms Kim Peake, Secretary, Victorian Department of Health and Human Services, identified shared responsibility as a benefit of reportable conduct schemes and stated that such schemes were:

a mechanism to say it is not only the role of a statutory child protection service to be in the business of protecting children from harm, it is a broader responsibility of all organisations to ensure that child safe standards are in place, that there are systems and processes to respond expeditiously to any concerns or that any allegations of abuse are acted on, and that the idea of there being a concern about retribution is countered by virtue of there being a very strong legislated scheme.¹⁰⁰

We consider there to be opportunity for increased collaboration and cooperation between agencies and sectors that goes beyond information sharing. Increased collaboration and cooperation allows agencies to share knowledge about, and experiences with, the scheme; share information about particular high-risk situations; and discuss lessons learnt from handling reportable conduct allegations and convictions.

In consultations with stakeholders in the New South Wales out-of-home care sector, we heard of the potential for the Family and Community Services Reportable Conduct Unit to share its experiences and lessons learnt with non-government service providers. In some serious reportable conduct cases, the Reportable Conduct Unit conducts the investigation and then shares the lessons learnt with the relevant non-government service provider.¹⁰¹ We also heard that there is a willingness on the part of education providers in New South Wales who have many years of experience with the scheme to collaborate with agencies and sectors that have less experience with the scheme.¹⁰²

4.3.2 Development of reportable conduct schemes in Australia

In April 2016, the Council of Australian Governments (COAG) welcomed a proposal for 'nationally harmonised reportable conduct schemes to improve oversight of responses to allegations of child abuse and neglect'.¹⁰³ It agreed, in principle, to 'harmonise reportable conduct schemes, similar to the current model in operation in New South Wales and announced in the Australian Capital Territory and Victoria'.¹⁰⁴

The Victorian Government and the Australian Capital Territory Government have since enacted reportable conduct schemes based on the New South Wales model:

- The Victorian scheme is set out in Part 5A of the *Child Wellbeing and Safety Act 2005* (Vic), inserted by the *Children Legislation Amendment (Reportable Conduct) Act 2017* (Vic). The scheme was phased in from 1 July 2017.¹⁰⁵
- The Australian Capital Territory scheme is set out in Division 2.2A of the *Ombudsman Act 1989* (ACT), inserted by the *Reportable Conduct and Information Sharing Legislation Amendment Act 2016* (ACT). The scheme began 1 July 2017.¹⁰⁶

Other state and territory governments have expressed varying degrees of interest in, and commitment towards, developing reportable conduct schemes.¹⁰⁷

In the *Institutional review of Commonwealth, state and territory governments* case study we heard that the Western Australian Department of the Premier and Cabinet has convened a working group to examine the issue.¹⁰⁸ The group has been considering issues and findings from this Royal Commission, and developments in Victoria and New South Wales.¹⁰⁹

Mr Michael Hogan, Director-General, Queensland Department of Communities, Child Safety and Disability Services, told us that reportable conduct schemes are a 'live matter' under consideration by the Queensland Government,¹¹⁰ and that the Queensland Government is 'closely considering what has been put in place in New South Wales and Victoria and the Australian Capital Territory', including differences between the schemes.¹¹¹ In March 2017, the Queensland Government released an issues paper on the matter, which confirmed its commitment to establishing a reportable conduct scheme in alignment with COAG's in-principle agreement.¹¹²

4.3.3 Support for reportable conduct schemes

Our case studies, research and stakeholder consultations showed consistent, broad support for reportable conduct schemes based on the New South Wales model as an oversight mechanism for complaints of institutional child sexual abuse.

Case studies

In case studies, some witnesses commented on the positive impact of the New South Wales reportable scheme on institutional responses to child sexual abuse.

Mr Damian De Marco, a survivor of child sexual abuse, appeared as a witness in *Case Study 13: The response of the Marist Brothers to allegations of child sexual abuse against Brothers Kostka Chute and Gregory Sutton* and in *Case Study 57: Nature, cause and impact of child sexual abuse in institutional contexts (Nature, cause and impact of child sexual abuse)*. During the public hearing for the *Nature, cause and impact of child sexual abuse* case study, Mr De Marco expressed his support for reportable conduct schemes. He told us that schemes need to be established in every Australian state and territory.¹¹³ Mr De Marco had previously expressed his support in the media for the Australian Capital Territory reportable conduct scheme after it was passed by the Legislative Assembly in August 2016:

It's a beautiful scheme because it teaches people what reportable conduct is, what's acceptable and what's not, and how they should deal with these allegations ... So often small, private organisations say 'oh no, this allegation has been made. What do I do?' ... Now, the people who run the scheme are actually there to explain 'this is what you do, this is how you run an investigation'.¹¹⁴

In *Case Study 53: Institutional review of Yeshivah Melbourne and Yeshiva Bondi (Institutional review of Yeshiva)*, Rabbi Mendel Kastel, the CEO of Jewish House and a member of the NSW Jewish Board of Deputies Task Force on Child Protection, gave evidence about the important impact of the New South Wales reportable conduct scheme for religious institutions. He stated:

A lot of the work that we've done, we've worked very closely with the New South Wales Ombudsman's Office, and I think it is important to recognise the incredible work that they do and the importance of having religious institutions and other institutions as part of the reportable conduct scheme so that it gives us more of a framework to be able to manage, within our own organisations, if something comes up, how to deal with it, how to deal with the people around it, et cetera. Their guidance has been invaluable.¹¹⁵

Research

At the time of our inquiry, no research had been undertaken to fully evaluate the New South Wales reportable conduct scheme. However, research we commissioned on oversight and regulatory mechanisms concluded that the New South Wales reportable conduct scheme was 'nominally robust', and that 'data indicates promising implementation capacity' based on the numbers of reports being made to the Ombudsman.¹¹⁶

The scheme is a notable additional oversight mechanism because it endows the NSW Ombudsman as an independent oversight body with the power to monitor agencies' investigations into alleged sexual abuse by their employees and volunteers in both government and non-government organisations, and in some cases to undertake these investigations.¹¹⁷

However, the non-binding nature of the Ombudsman's recommendations under the scheme, and concerns identified by the Ombudsman about some agencies' practices not consistently meeting the requirements of the scheme, were identified as potential problems.¹¹⁸

Stakeholder consultations

We heard that there is broad support for the New South Wales reportable conduct scheme from both government and non-government stakeholders. Stakeholders suggested to us that it has been a valuable oversight mechanism and some supported expanding the model to other jurisdictions.¹¹⁹

A number of stakeholders who interacted with the NSW Ombudsman as part of the scheme stated that the Ombudsman gave them valuable advice and support.¹²⁰

In discussions with our members, there is significant praise for the Ombudsman approach in New South Wales, and the strength that is seen there is a contact with an agency that gives immediate response and can provide advice for the school on a range of matters ...¹²¹

Government and non-government institutions that currently come under the scheme told us about the value of a scheme that oversees complaint handling.¹²² The Truth, Justice and Healing Council stated that practitioners working in dioceses and church organisations in New South Wales believe that 'having the scheme as an element of the overall child protection system has significantly increased the safety of children in New South Wales'.¹²³

The scheme received particularly strong support in submissions to our consultation paper on institutional responses to child sexual abuse in out-of-home care.¹²⁴ AbSec stated that 'reportable conduct schemes including processes for the investigation of allegations of harm are critical to ensuring the safety of children and young people in out-of-home care'¹²⁵ and that AbSec members were supportive of the scheme.¹²⁶ The Western New South Wales Local Health District considered that the scheme was a 'positive element in the protection of children in out-of-home care'.¹²⁷

MacKillop Family Services stated its support for 'the extension of a NSW-style reportable conduct scheme in each jurisdiction'.¹²⁸ The Uniting Church in Australia submitted that the establishment of a reportable conduct scheme in every jurisdiction would:

effectively deal with the range of risks associated with service providers investigating serious and potentially criminal allegations relating to their own services and staff (potential conflicts of interest, lack of investigatory skills, lack of resources, etc.).¹²⁹

Barnardos Australia described the New South Wales scheme as a ‘useful model for investigation of child sexual abuse’ and indicated that it supported its adoption in other jurisdictions.¹³⁰ However, the organisation also submitted that a uniform definition of reportable conduct is needed across jurisdictions to ‘ensure consistency of safety mechanisms for children’.¹³¹

State and territory ombudsmen and commissioners

State and territory ombudsmen and commissioners of other oversight bodies said to us in consultations that they supported the New South Wales reportable conduct scheme.

The Queensland Ombudsman told us that he thought a reportable conduct scheme ‘would be a very positive addition to the operation of the system in Queensland’ because ‘it creates a comprehensive oversight framework, which is perhaps its greatest feature’.¹³²

The Ombudsman Western Australia stated that ‘there would be much value in giving very strong consideration to the potential for such a (nationally consistent) scheme to be introduced in Western Australia’.¹³³

The South Australian Ombudsman submitted:

A reportable conduct scheme in every jurisdiction whereby an independent body has oversight of complaint handling in regard to all child abuse reports is desirable. The key elements of the scheme should be reflected in each jurisdiction’s scheme and there should be express provision for the sharing of relevant information across jurisdictions.¹³⁴

The Australian Capital Territory Human Rights Commissioner stated that she was ‘attracted to the reportable conduct model of New South Wales’.¹³⁵ Finally, the former Northern Territory Children’s Commissioner, Mr Howard Bath, gave evidence that it would be a ‘positive improvement’ if his office had the power to investigate complaints independently in the same manner as the NSW Ombudsman.¹³⁶ However, the former Commissioner also noted that the cost of the scheme would need to be ‘weighed up’, given the Northern Territory is a small jurisdiction.¹³⁷

Other Australian inquiries and reports

Previous Australian inquiries and reports have considered the merits of the New South Wales reportable conduct scheme and independent oversight more broadly.

Victoria’s Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations (Betrayal of Trust Inquiry) heard that the combined functions of organisational oversight and capacity building were key to the New South Wales reportable conduct scheme.¹³⁸ Participants in the inquiry identified four important areas of the scheme: scrutinising and

monitoring an organisation's response; investigating the manner of the organisation's response; building capacity and assisting organisations in appropriately responding to complaints; and identifying and monitoring trends in the manner of responding to complaints to assess the adequacy and effectiveness of an organisation's response.¹³⁹

The CEO of the Australian Childhood Foundation, Dr Joe Tucci, told the Betrayal of Trust Inquiry that the scheme:

has worked with organisations in a capacity building way and over time increased the level of scrutiny that organisations can come under in relation to the way that they investigate claims or allegations of abuse by volunteers and employees. I cannot think of a better system in place anywhere in the world.¹⁴⁰

In 2012, the Protecting Victoria's Vulnerable Children Inquiry considered whether the Department of Health and Human Services should retain responsibility for the regulation of out-of-home care providers. The inquiry panel found that the department should retain this responsibility provided that it was subject to the independent oversight of the Victorian Commission for Children and Young People.¹⁴¹

4.4 Key elements of reportable conduct schemes

Case studies, research and consultations on the New South Wales reportable conduct scheme have identified it as an effective mechanism for independent oversight of complaint handling by institutions – encouraging thorough complaint handling and timely and consistent procedures for reporting child sexual abuse.

The following discussion of reportable conduct schemes is based primarily on examples from the New South Wales scheme. It examines how elements of the scheme have worked in practice, their strengths and areas for improvement.

4.4.1 Independent oversight

The oversight body under a reportable conduct scheme should be independent of government and of the institutions whose operations it monitors.

A critical feature of the New South Wales reportable conduct scheme is the independence of the NSW Ombudsman. The Ombudsman is an independent statutory body, operationally separate from the government of the day and directly accountable to the public through the New South Wales Parliament. We heard during our Reportable Conduct Scheme Forum that the Ombudsman's independence helps to promote transparency and accountability in agencies' complaint handling.¹⁴²

In the Australian Capital Territory, the oversight body is also an Ombudsman – the ACT Ombudsman, operating under the *Ombudsman Act 1989* (ACT), which also provides for its independent operation.¹⁴³ In Victoria, the oversight body is the Commission for Children and Young People, established by section 6 of the *Commission for Children and Young People Act 2012* (Vic). This Act provides that the Commission must act independently and impartially in performing its functions.¹⁴⁴

Stakeholders told us that independent oversight by the NSW Ombudsman supports the integrity of institutional decision-making around administrative and disciplinary action. For example, in our *Parramatta Training School for Girls* case study, Ms Ruis, of New South Wales Juvenile Justice, stated that the Ombudsman is involved with every reportable conduct matter from the department and has not overruled any of Ms Ruis's decisions.¹⁴⁵ Ms Ruis explained that where a reportable conduct investigation has resulted in an employee's dismissal, 'it's not a whitewash' and the department can 'say what has happened', knowing that the Ombudsman has not disagreed with the decision.¹⁴⁶

In a submission to our issues paper on preventing sexual abuse of children in out-of-home care, the Western NSW Local Health District stated:

the NSW Ombudsman role in investigating 'reportable conduct' of employees is also a positive element in the protection of children in OOHC through legal requirement of supervisors to report certain conduct by employees, support for agencies implementing this obligation and again independent and transparent investigation of allegations that follow principles of natural justice.¹⁴⁷

In our *Catholic Diocese of Wollongong* case study, Sister Hanlen, Chancellor of the Catholic Diocese of Wollongong, gave her views on the Ombudsman's decision to have oversight of the Diocese's investigation into allegations made against John Nestor. She stated:

I welcomed that. I judged that it offered us the opportunity to ensure transparency. It offered us the opportunity to ensure that our process was fair and just and, importantly, it gave us the opportunity to receive competent and skilled advice from the Office of the Ombudsman.¹⁴⁸

New South Wales agency heads and other employees who have more recently come under the scheme indicated they have been able to use the scheme to justify and implement changes aimed at making their institutions child safe.¹⁴⁹ For example, the risk and compliance coordinator of a religious institution told us that when some colleagues questioned why the institution's policies, procedures and practices around child protection matters had changed for the first time in 50 years, he was able to rely on the Ombudsman's independent advice and guidance, as well as the legislative force of the scheme, to justify the changes.¹⁵⁰ For institutions that have traditionally had little oversight and in which there may be resistance to change, a reportable conduct scheme can be championed by leaders as a positive part of shifting attitudes to child protection and becoming a child safe institution.

We heard evidence in *Case Study 24: Preventing and responding to allegations of child sexual abuse occurring in out-of-home care* that the New South Wales reportable conduct scheme promotes cultural change in institutions, driven by independent oversight:

if we're talking about cultural change, to put the responsibility on the organisation to be vigilant in terms of identifying this type of behaviour and for there to be some openness and transparency ... then for an external player to have a look at how those matters are dealt with, is essential in this area.¹⁵¹

Attendees at private sessions also talked about the need for an independent body that could oversee and investigate complaints of child sexual abuse in institutions in a clear and transparent manner.¹⁵² One attendee said that independent oversight of institutions' handling of complaints of child sexual abuse was essential to ensure they were following the 'rules'.¹⁵³ Another told us:

People are saying that the institutions have gotten better. I believe that they've only quietened down ... What I would like to see is an independent body that only answers to the government, not the churches, not religion ...¹⁵⁴

4.4.2 Obligatory reporting by heads of institutions

Reportable conduct schemes should oblige heads of institutions to notify the oversight body of any reportable allegation, conduct or conviction in a timely and consistent manner.

Under the New South Wales scheme, the head of an institution must notify the Ombudsman about any reportable allegation or reportable conviction against an employee of the institution as soon as practicable and, in any event, within 30 days of the head becoming aware of the allegation or conviction.¹⁵⁵ The Victorian and Australian Capital Territory legislation contain similar provisions that require timely reporting by heads of institutions.¹⁵⁶

The New South Wales and Victorian schemes also encourage institutions to make reporting an institution-wide responsibility, as the heads of institutions must make arrangements within their institution to require employees to notify them of reportable allegations and convictions.¹⁵⁷

In our *Institutional review of Commonwealth, state and territory governments* case study, we heard that obligatory reporting ensures the NSW Ombudsman can be satisfied that institutions are appropriately responding to reportable allegations and convictions.¹⁵⁸

Direct reporting pathway

The New South Wales reportable conduct scheme also encourages reporting by giving employees a direct reporting pathway to the oversight body that does not require them to advise the head of their employing institution about their concerns. Under the New South Wales scheme, an employee of an institution may disclose, to the Ombudsman, information that gives the employee reason to believe that reportable conduct by another employee of the institution has occurred.¹⁵⁹ The Australian Capital Territory legislation contains a similar provision.¹⁶⁰ Under the Victorian legislation, any person may disclose a reportable allegation to the Commission for Children and Young People.¹⁶¹

These provisions encourage employees to come forward and report information to the oversight body in circumstances where they might feel uncomfortable using their institution's complaint handling process.¹⁶² Reasons for an employee not wanting to make a complaint might include the following:

- The head of the institution is the subject of the complaint.
- The head of the institution has a close personal relationship with the subject of the complaint.
- The employee has a close personal relationship with the subject of the complaint.
- The subject of the complaint holds a position of authority in the institution.

Notification period

The New South Wales scheme provides for a 30-day notification period within which an institution head must notify the Ombudsman of any reportable allegations or convictions.¹⁶³ The 30-day notification period does not prioritise allegations of imminent harm or more serious alleged conduct.

During our public hearing for *Case Study 38 in relation to criminal justice issues*, the NSW Deputy Ombudsman, Mr Steven Kinmond, gave evidence that:

In practice, the strong advice we provide to the many hundreds of agencies that are responsible for reporting matters to us is that as soon as the agency head becomes aware of a reportable allegation, then they should notify our office. Now, the Act [*Ombudsman Act 1974* (NSW)] requires that they do it within 30 days, but our strong advice to agencies is as soon as practical should be as soon as practical.¹⁶⁴

When asked during the hearing whether institutions tend to notify quickly in practice, Mr Kinmond stated: 'Not universally, not in every case. But ... there is a fairly good understanding of the need by agencies to notify us promptly'.¹⁶⁵

A 30-day notification period in reportable conduct matters that involve a sexual offence or sexual misconduct is problematic because there is no oversight of such matters by the Ombudsman in the critical early stages where poor complaint handling practices can have profound, negative impacts on victims and their families.

In particular, the notification period impinges on the Ombudsman's critical role in checking that institutions are responding appropriately – for example, by undertaking risk assessment – and that where required such matters have been referred to the NSW Police Force and the Department of Family and Community Services. As Mr Kinmond observed, 'delay [in reporting] can mean denial of justice'.¹⁶⁶ We consider that the 30-day notification period also hampers the Ombudsman's ability to identify and address high-risk situations and employees, thereby potentially placing children at risk.

In contrast to the New South Wales scheme, Victoria's reportable conduct scheme has two notification timeframes – a three-day notification period and a 30-day notification period. Heads of institutions must notify the Commission for Children and Young People of a reportable allegation within three business days after becoming aware of the allegation, with more detailed information to be provided within the 30-day period.¹⁶⁷ As part of the initial notification, the head of the institution must advise whether Victoria Police has been contacted about the matter.¹⁶⁸ This ensures that the police are involved early where a criminal offence may have been committed.

Some institutions that come under the New South Wales scheme told us about their internal timeframes for employees to notify the head of the agency of a reportable allegation or conviction. The Employee Performance and Conduct Unit in the New South Wales Department of Education requires that school principals notify the unit of reportable conduct matters within one working day of becoming aware of the matter.¹⁶⁹ One large out-of-home care provider told us they had a seven-day timeframe for employees to notify the head of institution of a reportable conduct matter.¹⁷⁰ These timeframes indicate that institutions, if their employees follow procedures, are able to report matters to the Ombudsman in a shorter timeframe than is currently prescribed by the *Ombudsman Act 1974* (NSW).

It is our view that a 30-day notification period dilutes the primary purpose of the scheme to ensure oversight of institutional complaint handling. The New South Wales and Australian Capital Territory governments should consider whether their reportable conduct scheme legislation should include a three-day initial notification period, similar to the Victorian approach, in order to improve reporting of, and responding to, child sexual abuse.

Reportable allegations

Under reportable conduct schemes, the heads of institutions must report a ‘reportable allegation’ to an oversight body. In New South Wales, a reportable allegation is defined as ‘an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct’.¹⁷¹ In the Australian Capital Territory, a reportable allegation is defined as ‘an express assertion that reportable conduct has happened’.¹⁷²

However, under the Victorian legislation, a reportable allegation means ‘any information that leads a person to form a reasonable belief’ that an employee has committed reportable conduct or committed misconduct that may involve reportable conduct.¹⁷³ Reasonable belief requirements are also applied under Victorian legislation to determine whether a person has committed an offence by failing to disclose a child sexual offence¹⁷⁴ and in relation to laws concerning mandatory reporting to child protection authorities.¹⁷⁵ We observe that a reasonable belief requirement may unnecessarily imply that an institution needs to conduct its own inquiries before the obligation to report arises.

4.4.3 Inclusion of sexual misconduct as reportable conduct

Reportable conduct schemes should require the reporting of conduct by employees that is broader than conduct that would constitute a criminal offence. Under existing reportable conduct legislation, reportable conduct includes both sexual offences and ‘sexual misconduct’.¹⁷⁶

The Victorian reportable conduct scheme legislation provides that sexual misconduct ‘includes behaviour, physical contact or speech or other communication of a sexual nature, inappropriate touching, grooming behaviour and voyeurism’.¹⁷⁷ The Australian Capital Territory scheme legislation refers only to ‘misconduct of a sexual nature that does not form part of an offence’.¹⁷⁸

Although the New South Wales legislation does not define sexual misconduct, the Ombudsman has produced guidelines that identify three categories of sexual misconduct: crossing professional boundaries; grooming; and sexually explicit comments and other overtly sexual behaviour.¹⁷⁹

Some stakeholders expressed concerns with the Ombudsman’s definition of what constitutes sexual misconduct, particularly ‘grooming’, under the scheme.¹⁸⁰ For example, in a quasi-domestic foster care setting, carers should be expected to provide children with safe living environments and their relationship with a child may be similar to that of a parent or guardian. This type of relationship is quite different to the relationship that an employee in a non-domestic institutional setting would be expected to have with a child. For example, one stakeholder told us that seeing a carer hug a child occurs in a different context to seeing a teacher or a sports coach hug a child.¹⁸¹ This stakeholder considered that the New South Wales reportable conduct scheme should provide clearer and more nuanced guidance to carers around behaviours that constitute grooming and that this guidance should consider the impact of these behaviours on the child.¹⁸²

We also heard that some stakeholders in the education sector view the NSW Ombudsman's definition of grooming as too broad and that some behaviours that breach professional standards should not be classed as grooming.¹⁸³ An example is a teacher giving a child who never has any lunch, money to buy lunch.¹⁸⁴

Concerns around the definition of sexual misconduct under the New South Wales scheme highlight the importance of clarity in key definitions in reportable conduct schemes. In particular, legislation should define key terms, such as sexual misconduct, by describing the included behaviours or acts and also providing examples of excluded behaviours or acts that are not intended to be prohibited as part of the scheme. An example of the latter approach is found in the Australian Capital Territory legislation, which provides that reportable conduct does not include conduct:

- a. that is reasonable discipline, management or care of a child taking into account the characteristics of the child, and any relevant code of conduct or professional standard that at the time applied to the discipline, management or care of the child;
- or
- b. if the conduct is investigated and recorded as part of workplace procedure—that is trivial or negligible ...¹⁸⁵

The *Ombudsman Act 1989* (ACT) provides the following examples of conduct that is not reportable conduct: touching a child to attract the child's attention, to guide a child, or to comfort a distressed child; a school teacher raising their voice to attract attention or restore order in a classroom; accidental conduct.¹⁸⁶

4.4.4 Coverage of historical conduct

Under the New South Wales, Victorian and Australian Capital Territory legislation, there is no time limit on when the conduct occurred in order for it to be reportable. That is, reportable conduct includes the historical conduct of any existing employee of an institution, as well as current or recent conduct.

In our view, while there may be practical problems for institutions and the oversight body in investigating and responding to allegations of historical conduct, it is appropriate that such conduct be reported because an existing employee may still be working with children. Reporting of historical reportable conduct assists the oversight body and institutions to identify concerning patterns of employee behaviour and manage any current risks the employee may pose to children's safety.

4.4.5 Coverage of employees, volunteers and contractors

Reportable conduct schemes should generally require the reporting of conduct by any individual engaged by an institution to provide services to children, whether or not they are a paid employee.

The New South Wales legislation provides that an employee of an agency includes ‘any employee of the agency, whether or not employed in connection with any work or activities of the agency that relates to children’ and ‘any individual engaged by the agency to provide services to children (including in the capacity of a volunteer)’.¹⁸⁷

The Victorian and Australian Capital Territory legislation contain similar provisions extending the operation of their respective reportable conduct schemes beyond employees in the ordinary sense.¹⁸⁸ In Victoria, the extended reach applies even if the person is not engaged to provide services to children.¹⁸⁹

Part of the Victorian legislation’s definition of ‘employee’ is also intended to ensure that foster care and kinship care arrangements fall within scope, up until the point when a permanent care order is made for the child in question.¹⁹⁰

4.4.6 Protections for persons making reports

Reportable conduct schemes should protect those who inform the head of an institution or the oversight body about reportable conduct, to encourage reporting and an institutional culture committed to the scheme.¹⁹¹

As discussed in Chapter 2, we recommend that legislation provide comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts, including under reportable conduct schemes. Comprehensive protection shields such individuals from civil and criminal liability, and from reprisals or other detrimental action as a result of making a complaint or report.

Existing reportable conduct schemes provide significant protection for individuals who disclose information to the relevant oversight body. Under the *Ombudsman Act 1974* (NSW), employees who disclose information to the NSW Ombudsman are protected from civil liability.¹⁹² It is also an offence for an employer to dismiss or prejudice any employee on account of the employee assisting the Ombudsman.¹⁹³

Under the *Child Wellbeing and Safety Act 2005* (Vic), a disclosure under the scheme to the Commission for Children and Young People does not constitute unprofessional conduct or a breach of professional ethics and the person making it is not subject to any liability.¹⁹⁴ This Act also protects the identity of persons making reports through a prohibition on the publication of identifying information.¹⁹⁵ Such a provision should be considered by other states and territory governments.

In the Australian Capital Territory, a person disclosing information under the territory's reportable conduct scheme is not civilly liable for anything done, or omitted to be done, honestly and without recklessness in complying with the scheme (or in the reasonable belief that the disclosure complied with the scheme).¹⁹⁶ In addition, provisions in the *Children and Young People Act 2008* (ACT) provide protection for people who supply reportable conduct information to other entities as part of information sharing arrangements under that Act.¹⁹⁷

4.4.7 Powers and functions of the oversight body

The oversight body that administers a reportable conduct scheme should have a core range of powers to enable the effective monitoring of institutional complaint handling, and to ensure that institutions are held accountable for their actions.

Scrutinising institutional complaint handling systems

A critical function of an oversight body under a reportable conduct scheme is to scrutinise institutional complaint handling systems. This function allows the oversight body to engage with institutions in a way that is not linked to any particular instance of reportable conduct.

In New South Wales, the *Ombudsman Act 1974* (NSW) provides that the Ombudsman is to 'keep under scrutiny the systems' for 'preventing reportable conduct' and for 'handling and responding to reportable allegations, or reportable convictions'.¹⁹⁸ For that purpose, the Ombudsman may require the heads of institutions 'to provide information about those systems and their operation'.¹⁹⁹ This function allows the Ombudsman to audit institutions' policies and procedures and give feedback to heads of institutions about areas of good practice and areas for improvement in complaint handling. The Australian Capital Territory legislation contains similar provisions.²⁰⁰

Although Victoria's legislation does not contain an express 'scrutiny of systems' function, it does allow the Commission for Children and Young People to engage with institutions about their complaint handling systems. An objective of the Commission as the scheme oversight body set out in the legislation is to prevent reportable conduct from occurring. The Commission does this by working with institutions, regulators and other relevant bodies.²⁰¹

Monitoring of investigations and handling of allegations

An oversight body under a reportable conduct scheme should have appropriate powers to facilitate the monitoring of investigations by institutions.

The *Ombudsman Act 1974* (NSW) provides that the Ombudsman ‘may monitor the progress of the investigation ... if the Ombudsman considers it is in the public interest to do so’.²⁰² The Ombudsman or an officer of the Ombudsman ‘may be present as an observer during interviews conducted by or on behalf of the agency for the purpose of the investigation and may confer with the persons conducting the investigation about the conduct and progress of the investigation’.²⁰³ Further, the Ombudsman may require heads of agencies to provide ‘such documentary and other information (including records of interviews) as the Ombudsman may from time to time request with respect to the investigation’.²⁰⁴ The Victorian and Australian Capital Territory legislation contain similar provisions.²⁰⁵

There may be scope for the NSW Ombudsman to improve some aspects of its involvement in reportable allegations made under the scheme.

In *Case Study 23: The response of Knox Grammar School and the Uniting Church in Australia to allegations of child sexual abuse at Knox Grammar School in Wahroonga, New South Wales*, we found there were significant shortcomings in the Ombudsman’s response to a 2004 investigation of reportable conduct allegations made against a Knox teacher, Mr Adrian Nisbett.²⁰⁶ At the conclusion of the investigation into the allegations against Mr Nisbett, the then Principal of Knox, Mr John Weeks, informed the Ombudsman that he intended to adopt the findings made by an external investigator as the school’s findings.²⁰⁷ He also informed the Ombudsman that Mr Nisbett would leave Knox’s employment on 18 June 2004.²⁰⁸

On 19 July 2004, the Ombudsman informed Mr Weeks that it did not require the school ‘to take further action in relation to this allegation at this time’.²⁰⁹ Mr Weeks gave evidence that he relied on this advice from the Ombudsman that ‘no further action was required’.²¹⁰ Knox did not report the matter to police.²¹¹ The Ombudsman conceded that there were significant shortcomings in the Ombudsman’s overall response to this matter.²¹² The Royal Commission accepted the Ombudsman’s acknowledgement that there were significant shortcomings in his response, including that he did not advise Knox to notify the police.²¹³

Under the New South Wales scheme, the Ombudsman may provide the institution with recommendations for action to be taken in relation to its handling of a reportable allegation or conviction.²¹⁴ The Victorian and Australian Capital Territory legislation contain similar provisions.²¹⁵

The non-binding nature of recommendations means that the NSW Ombudsman is reliant on building strong relationships with agencies to ensure its recommendations are implemented. We heard that the Ombudsman has been very successful in building such relationships,²¹⁶ so is rarely faced with protracted agency inaction or non-compliance. One stakeholder told us they

genuinely felt partnered with the Ombudsman.²¹⁷ Another stakeholder from the education sector told us that the Ombudsman had a positive and collaborative culture, which meant the Ombudsman rarely needed to use a 'stick' or a punitive approach with agencies.²¹⁸

However, the non-binding nature of an oversight body's recommendations may present a potential impediment to the effective functioning of a reportable conduct scheme. Non-binding recommendations may limit the capacity of an oversight body to ensure change within institutions that are reluctant or unwilling to change and where child sexual abuse is being actively covered up. Further, the oversight body's amicable relationship with an institution does not guarantee that its recommendations are always implemented by the institution, or, if implemented, that it is done in the intended way.

There may be merit in governments considering whether the recommendations of oversight bodies should be binding for agencies in exceptional circumstances – for example, where it is in the public interest. The capacity of oversight bodies to issue binding orders in some circumstances would enable them to enforce the scheme where an agency refuses to improve its complaint handling practices or otherwise comply with recommendations.

More broadly, the capacity for binding orders may also serve as a useful motivation for agency compliance, as well as being a deterrent to bad practice. Further, this approach would not be inconsistent with existing powers to compel conduct – for example, an agency must defer its investigation of reportable conduct where the NSW Ombudsman has decided to investigate the matter itself.²¹⁹

Own motion investigations

An oversight body under a reportable conduct scheme should have the power, on its own initiative, to conduct an investigation of reportable conduct.

The *Ombudsman Act 1974* (NSW) provides that the Ombudsman 'may conduct an investigation' concerning reportable conduct 'of which the Ombudsman has been notified ... or otherwise becomes aware'.²²⁰ In addition, the Ombudsman may 'conduct an investigation concerning any inappropriate handling of or response ... whether on the Ombudsman's own initiative or in response to a complaint'.²²¹ The Victorian and Australian Capital Territory legislation contain similar provisions.²²²

There could be some concerns about the delineation of roles and responsibilities when the Ombudsman conducts its own investigation or is heavily involved in monitoring the institution's investigation. We heard that there might be confusion around whether it is the role and responsibility of the Ombudsman or the institution to keep the parents informed about the progress and findings of an investigation and any action taken in response to those outcomes.²²³

Class or kind agreements

An oversight body under a reportable conduct scheme should have powers to ensure that the focus of its efforts are on serious matters and on institutions that have not demonstrated a satisfactory level of competence in complaint handling.

The *Ombudsman Act 1974* (NSW) provides that the Ombudsman ‘may exempt any class or kind of conduct of employees of an agency from being reportable conduct’.²²⁴ These class or kind agreements allow agencies that have demonstrated a satisfactory level of competence in responding to complaints to carry out investigations into certain exempted conduct without having to notify the Ombudsman.²²⁵ This allows the Ombudsman to concentrate on monitoring more serious matters.

The Victorian and Australian Capital Territory schemes also provide for class or kind agreements.²²⁶ The Victorian provision is the most explicit, stating that the Commission for Children and Young People may exempt the head of an entity, or a class of entities, from the reporting requirements if it considers that ‘the entity is competent to investigate, without the oversight of the Commission, a reportable allegation in respect of the class or kind of conduct to which the exemption relates’ and ‘the entity has demonstrated competence in responding to reportable allegations in respect of that class or kind of conduct’.²²⁷

According to the NSW Ombudsman, ‘In large part due to the effect of our class or kind determinations, matters involving serious criminal allegations now make up a significant proportion of our work’.²²⁸ The Ombudsman also cited its class or kind agreements as an indication that many agencies had increased their competence in handling reportable conduct investigations.²²⁹

A stakeholder from the education sector commented on this aspect of the scheme, observing that as the competency of some agencies with class or kind agreements had improved, the agreements had increased in complexity, which allowed the agency to concentrate on serious matters.²³⁰ The stakeholder noted that the agency had to show the Ombudsman ‘growth’ and ‘maturity’ in its complaint handling to enter into such agreements.²³¹ Another stakeholder told us that he appreciated that class or kind agreements could be tailored to the expertise and experience of the sector, and that this flexibility meant that resources could be allocated to the investigation of serious matters.²³²

Capacity building and practice development

Oversight bodies under reportable conduct schemes should play an important role in capacity building and practice development within institutions, through the provision of training, education and guidance.

The Victorian legislation provides that the Commission for Children and Young People has a function to 'educate and provide advice to entities in order to assist them to identify reportable conduct and to report and investigate reportable allegations'.²³³

The NSW Ombudsman provides training, education and guidance to agencies on how to identify, report, handle and investigate reportable allegations and convictions. It conducts targeted information sessions for agencies that have not previously notified under, or are otherwise new to, the scheme.²³⁴ For example, in 2016, the Ombudsman conducted a targeted information session for YMCA NSW staff who work in children's services on their roles and responsibilities under the scheme.²³⁵ Capacity building is also facilitated through the Ombudsman's scrutiny of systems function, which allows it to audit agencies' child protection policies and procedures and provide feedback.

Although not expressly legislated for, the NSW Ombudsman's capacity building and practice development role is seen as critical to improving institutions' responses to complaints.²³⁶

In our *Institutional review of Commonwealth, state and territory governments* case study, Mr Michael Coutts-Trotter told us that the Ombudsman does a good job of balancing its oversight responsibilities with its capacity building programs.²³⁷

In a submission to our consultation paper on complaint handling, the Truth, Justice and Healing Council stated:

The NSW Ombudsman's Office is very responsive in providing assistance with practice development ... In a dynamic environment, institutions grapple with many pieces of legislation, regulatory bodies, expectations and stakeholders. There are times where institutions are caught between differing, often competing and sometimes contradictory legislation and policy. The NSW Ombudsman's Office has engaged in continual dialogue with agencies in order to assist with continuous improvement of their policies and compliance. This is a very important aspect of the manner in which the NSW Ombudsman's Office fulfils its functions.²³⁸

Anglicare Sydney submitted:

For small and medium-sized out-of-home care agencies such as our own, we believe that there will always need to be the option of contacting an external body such as the NSW Ombudsman for advice about complaint handling and to receive ongoing support.²³⁹

Participants at our public roundtable on multidisciplinary and specialist policing responses also commented on the positive aspects of the NSW Ombudsman's support to agencies. For example, Ms Beth Blackwood from Independent Schools of Australia stated:

I think one of the positives about the Ombudsman system is providing advice around HR [human resources] issues. So if you have a member of staff against whom there have been allegations, but not proven allegations, what are the processes there and being able to provide some advice, and particularly advice if the investigations do not lead to charges.²⁴⁰

We heard that, as the scope of the scheme has expanded, the NSW Ombudsman has worked with agencies to improve their processes.²⁴¹ One stakeholder whose agency recently came under the scheme commented that agencies need the support and guidance of the Ombudsman to help them on their 'learning journey' towards a mature complaint handling process and being a child safe institution.²⁴²

Some New South Wales government departments have established internal reportable conduct units – for example, the Department of Family and Community Services Reportable Conduct Unit – that have worked with the Ombudsman to drive practice improvement in complaint handling.²⁴³ Lessons learned from the reportable conduct scheme are fed into practice development – for example, the Department of Family and Community Services is creating a structured process for getting feedback from children on aspects of complaint handling.²⁴⁴

While the New South Wales reportable conduct scheme is considered to have improved agencies' capacity to respond to complaints,²⁴⁵ we heard that the scheme can be complex for institutions to understand.²⁴⁶ In the *Disability service providers* case study, the head of a disability service provider based on the New South Wales south coast gave evidence that she struggled with the terminology in the Ombudsman's reportable conduct notification forms.²⁴⁷ For example, she said she had interpreted the information contained in the forms as meaning she could not sustain an allegation of sexual assault unless there had been charges laid.²⁴⁸

One education sector stakeholder with many years' experience in handling reportable conduct matters told us that some matters are complicated to handle and require a strong technical knowledge of the scheme, which can be gained through training, education and support from the Ombudsman.²⁴⁹

Ongoing efforts to improve understanding of, and engagement with, the scheme are important for reducing under-reporting and mishandling of institutional child sexual abuse complaints. Although the NSW Ombudsman has a wide reach, there are still knowledge and capacity gaps in some agencies and sectors, which are discussed further in this section. Heads of agencies and employees need to undertake regular, specialised training and education so that they are aware of the scheme and understand what they need to do to comply.

Improving knowledge and understanding of the scheme is not just about ensuring that heads of agencies and employees understand their legal obligations under the scheme. It is also about an institution effectively communicating the scheme's rationale and objectives to employees as part of its broader child safe strategies. We were told that an 'us and them' mentality between employees and the individuals responsible for managing and investigating reportable allegations – such as reportable conduct unit officers in government departments – can act as a barrier to the scheme's smooth operation.²⁵⁰

In *Case Study 38 in relation to criminal justice issues*, Mr Kinmond indicated that poor understanding of, and engagement with, the New South Wales reportable conduct scheme impacts on the timeliness of agency reporting. He stated that ‘when one is dealing with agencies that might have less frequent involvement with the scheme, then that can impact on not only their compliance but also the efficiency with which we receive information’.²⁵¹

The NSW Ombudsman’s preferred option for addressing the lack of knowledge and expertise in some sectors is for the New South Wales Government and relevant stakeholders to consider establishing a single entity to advise on risk management, develop policies, deliver training and conduct complex investigations.²⁵²

The Ombudsman sees two main benefits to this approach. First, the Ombudsman believes that overall costs would be relatively modest ‘when weighed against the risk of many of these bodies remaining under-resourced in relation to their capacity to handle very complex and serious allegations’.²⁵³ Second, this approach would help agencies manage conflicts of interest ‘particularly in relation to smaller institutions, such as many childcare centres, where the head of the agency, or a family member or friend of the head of the agency, may be the subject of the allegation’.

In the *Institutional review of Commonwealth, state and territory governments* case study, Mr Coutts-Trotter expressed his view on how best to assist small agencies with limited resources to better comply with the scheme:

One solution might be to identify and train a panel of investigators that are available to small organisations to use so they don’t have to maintain this capability in-house, but there is a group of people they can turn to with confidence that they understand the responsibilities of how to conduct an investigation well and they can challenge the organisation to make sure it is done well.²⁵⁴

Commenting on the need for improved agency understanding of the scheme in certain sectors, the NSW Ombudsman submitted that:

Notwithstanding our capacity-building focus, we have observed that smaller agencies often lack the required depth of knowledge and expertise to handle serious reportable allegations (including allegations of sexual abuse) ... our consultations to date with new and emerging sectors, including certain church bodies, and the sport and recreation sector, have brought to light the varying ability of these agencies to identify and respond properly to serious child abuse allegations. For example, a number of organisations with low revenue streams but high membership numbers, have highlighted the challenges they face in responding appropriately to complex matters ...²⁵⁵

Roles and responsibilities under the scheme may also need to be clarified as different sectors experience legislative and policy change.²⁵⁶ We heard that this had been a particular challenge in the out-of-home care sector as services transitioned from the government to non-government sector.²⁵⁷

We heard that there is a need for improved agency understanding of, and engagement with, the New South Wales scheme within Aboriginal and Torres Strait Islander service providers, the early childhood sector and non-government schools, as well as within religious institutions and the sport and recreation sector.²⁵⁸

Early childhood sector

In New South Wales, the early childhood sector is highly regulated. Under the Education and Care Services National Regulations, as in effect in New South Wales, the approved provider of an education and care service must ensure that:

- the nominated supervisor of the service and any certified supervisor in day-to-day charge of the service has successfully completed a course in child protection approved by the New South Wales regulatory authority²⁵⁹
- the nominated supervisor and staff members at the service who work with children are advised of the existence and application of the current child protection law in the relevant jurisdiction and understand their obligations under that law.²⁶⁰

Despite these regulations, we heard of varied levels of understanding of the scheme in the early childhood sector.²⁶¹ According to the Ombudsman, the number of reports made by this sector is 'not particularly high'²⁶² and 'the variability across this sector ... of staff understanding of child protection obligations, including reportable conduct responsibilities, represents a significant challenge'.²⁶³

As at 31 December 2015, there were 5,233 approved children's services in New South Wales.²⁶⁴ Between 2010 and 2015, 294 services made a notification to the Ombudsman.²⁶⁵ This accounts for around 5 per cent of all services.²⁶⁶ The disparity in the size of the sector and the number of services that have made notifications may indicate under-reporting.

We heard that barriers to reporting – such as personal relationships between staff or fear of being bullied or ostracised for making a report – may impact on reporting in the early childhood sector.²⁶⁷ Chapter 2 of this volume contains further information on barriers to reporting.

A lack of awareness of the scheme on the part of some institutions may be due to the sector's size and governance arrangements. Children's education and care services are usually privately owned or run by volunteer management committees.²⁶⁸ Nationally, large providers (25 or more services) run 31 per cent of services, medium providers (between two and 24 services) run 29 per cent of services and small providers (one service) run 40 per cent of services.²⁶⁹

There is no compulsory child protection training for private owners or management committees.²⁷⁰ Private owners, who are the head of agency for the purpose of the scheme, may not be involved in the day-to-day running of their centres and may be unaware of their responsibilities under the scheme.²⁷¹ Children's education and care services run by volunteer management committees – often parents of children at the centre – can run into problems with high committee member turnover and a lack of specialist child protection knowledge at the committee level.²⁷²

Improved education and training about the scheme is required in the early childhood sector, particularly for private owners and management committees.²⁷³ The Ombudsman considers that 'strategies which are effective in broadening the number of staff who receive relevant training should be a priority'.²⁷⁴ Reporting rates may also be improved by ensuring that the head of agency role is held by a manager who is involved in the day-to-day running of the centre. In the case of privately owned children's education and care services, the Ombudsman suggests that the head of agency role could be fulfilled by the licensee, centre director or authorised supervisor.²⁷⁵

Aboriginal and Torres Strait Islander service providers

We heard that capacity building, professional support for staff, supervision of staff undertaking investigations and specialised training are ongoing needs in the Aboriginal and Torres Strait Islander out-of-home care sector.²⁷⁶ AbSec submitted that it is seeking to establish a dedicated Aboriginal and Torres Strait Islander reportable conduct unit to improve complaint handling in the Aboriginal and Torres Strait Islander out-of-home care sector.²⁷⁷ The unit would engage in specialist support and skill development, capacity building, systemic reviews, data collection and discussions with high-level stakeholders.²⁷⁸ AbSec explained:

This unit, [would be] modelled on a similar unit within FACS [Department of Family and Community Services, NSW] that has been effective in improving the quality of responses to allegations of abuse in care and informing practice improvements arising from such allegations (individually and in aggregate), in order to produce the same benefits within the Aboriginal NGO [non-government organisation] sector as well as supporting capacity building in Aboriginal communities across the state.²⁷⁹

Non-government schools

During our consultations on reportable conduct schemes, we heard concerns about continued misunderstanding of reportable conduct in New South Wales non-government schools. One stakeholder told us this stemmed from a preference in some non-government schools to keep complaints of child sexual abuse 'in-house'.²⁸⁰ Another stakeholder raised the issue that teachers in non-government schools might not have a strong understanding of how to report child protection concerns about a colleague under the scheme.²⁸¹

In Case Study 22: *The response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions* we found that, despite his role as a Director of Yeshiva College and the Dean of Yeshiva Gedolah Rabbinical College, Rabbi Yosef Feldman was either ignorant of or ill-informed about the obligations in New South Wales to report complaints of child sexual abuse to external authorities, including the NSW Ombudsman.²⁸²

However, contemporary data from the NSW Ombudsman shows that government and non-government schools have very similar reporting rates under the scheme, including for sexual misconduct and sexual offence matters.²⁸³

Public reporting

An oversight body under a reportable conduct scheme should be required to report annually on the operation of the scheme, including on trends in the reports received from institutions.

The NSW Ombudsman's *Annual report 2015–16* contains data about the operation of the scheme as well as a discussion of trends in the reported conduct.²⁸⁴

The Victorian legislation expressly provides that annual reports of the Commission for Children and Young People may include 'a statement about trends observed by the Commission in relation to the reportable conduct scheme'.²⁸⁵

The power to report to parliament is also important.²⁸⁶ The NSW Ombudsman 'may, at any time, make a special report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report on any matter arising in connection with the discharge of the Ombudsman's functions'.²⁸⁷ For example, in February 2016 the NSW Ombudsman made a special report to New South Wales Parliament requesting that it review the scope of the New South Wales reportable conduct scheme.²⁸⁸

4.4.8 Provision for review of schemes

Reportable conduct schemes should be reviewed regularly. Experience in New South Wales shows that schemes need to adapt to changing dynamics and new challenges relevant to employee-related child abuse.

Legislative changes to the scheme and policy changes by the NSW Ombudsman have been made in response to:²⁸⁹

- identified shortcomings in the scheme
- improved agency responses to reportable conduct allegations and convictions
- new and evolving risks to children in institutions, such as online grooming

- research and policy developments around best practice in complaint handling and investigations
- regulatory and policy developments in sectors, such as the shift in New South Wales in the delivery of out-of-home care services from government to non-government service providers.

The *Ombudsman Act 1974* (NSW) was amended in 2015 to allow the Ombudsman and a head of agency to share information about a reportable allegation with the child who is the subject of the allegation and their parent or caregiver.²⁹⁰ The legislative intention was to enable the Ombudsman and institutions to share information about reportable conduct investigations without breaching privacy laws.²⁹¹ The approach was also more consistent with the approach the NSW Police Force takes to informing complainants about police investigations.²⁹²

However, the New South Wales scheme has not been subject to comprehensive review since it commenced operations in 1999. As noted, the Ombudsman in February 2016 requested the New South Wales Parliament review the scope of the scheme.²⁹³ This issue is discussed in more detail in Section 4.6, ‘Scope of reportable conduct schemes’.

In our view, state and territory governments should periodically review the operation of reportable conduct schemes. The reviews should determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse.

The Victorian legislation provides that the Minister ‘must cause a review to be made of the first five years of operation of the reportable conduct scheme and must cause a copy of a report of the review to be laid before each House of Parliament’. In particular, the review ‘must include consideration as to whether the reportable conduct scheme should be expanded to apply to any other entities’.²⁹⁴

4.5 Implementing reportable conduct schemes

4.5.1 Benefits of nationally consistent implementation

In April 2016, the Council of Australian Governments (COAG) agreed in principle to ‘harmonise reportable conduct schemes, similar to the current model in operation in NSW and announced in the ACT and Victoria’.²⁹⁵ In the public hearing for our *Institutional review of Commonwealth, state and territory governments* case study, there were no objections by Australian Government or state and territory government representatives to Counsel Assisting’s proposal that harmonisation of state and territory reportable conduct schemes should occur.²⁹⁶

In our view, the potential benefits of nationally consistent implementation of reportable conduct schemes are significant. Implemented on this basis, reportable conduct schemes could:

- remove any advantage to potential offenders of travelling to jurisdictions that do not have a reportable conduct scheme
- contribute to the equal protection of children from child sexual abuse in institutions regardless of their circumstances and geographic location
- allow for collection and analysis of national data on institutional child abuse and neglect
- provide a level of uniformity for institutions operating across jurisdictions in how they respond to and report complaints, as well as the oversight they operate under, which would allow national institutions to standardise complaint handling policies and procedures²⁹⁷
- address some of the issues that arise from employee mobility between jurisdictions – for example, a nationally consistent approach would allow institutions to give employees consistent training in complaint handling and reduce the administrative burden and need for employees to learn new requirements when they move interstate²⁹⁸
- have desirable flow-on benefits for other regulatory systems, such as the Working With Children Check system, carers registers and teacher or other professional registers, including through the sharing of information and experience
- support the implementation of other recommendations we have made – particularly on Child Safe Standards, complaint handling, Working With Children Checks and information sharing.

4.5.2 Achieving national consistency

State and territory governments have a unique opportunity to achieve national consistency in reportable conduct schemes by using the New South Wales scheme as a model – as Victoria and the Australian Capital Territory have already done.

It should be expected that other state and territory governments will tailor the New South Wales model to suit their legislative and regulatory environments. There are some differences between the New South Wales, Victorian and Australian Capital Territory reportable conduct schemes, such as in the scope of the institutions they cover (see Section 4.6, ‘Scope of reportable conduct schemes’).

However, while we agree that harmonisation should not ‘stifle innovation’,²⁹⁹ some key elements of reportable conduct schemes should be consistent across all jurisdictions. We make the following recommendations for the establishment of nationally consistent reportable conduct schemes.

Recommendation 7.9

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

Recommendation 7.10

Reportable conduct schemes should provide for:

- a. an independent oversight body
- b. obligatory reporting by heads of institutions
- c. a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child
- d. a definition of reportable conduct that includes the historical conduct of a current employee
- e. a definition of employee that covers paid employees, volunteers and contractors
- f. protection for persons who make reports in good faith
- g. oversight body powers and functions that include
 - i. scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions
 - ii. monitoring the progress of investigations and the handling of complaints by institutions
 - iii. conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware
 - iv. power to exempt any class or kind of conduct from being reportable conduct
 - v. capacity building and practice development, through the provision of training, education and guidance to institutions
 - vi. public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

Recommendation 7.11

State and territory governments should periodically review the operation of reportable conduct schemes, and in that review determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse.

4.6 Scope of reportable conduct schemes

We believe regulation and oversight should be consistent, balanced and proportionate to an institution's risk, to avoid placing unnecessary or excessive regulatory burden on institutions and government. This section discusses the scope of the institutions that should be covered by reportable conduct schemes.

Our starting point is that the handling of child sexual abuse complaints should be subject to the oversight of a reportable conduct scheme only where institutions:

- exercise a high degree of responsibility for children
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.

We recommend that, at a minimum, these should include institutions that provide:

- accommodation and residential services for children
- activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- childcare services
- child protection services and out-of-home care
- disability services and supports for children with disability
- education services for children
- health services for children
- justice and detention services for children.

This section begins by comparing the scope of other regulatory schemes that contribute to making institutions child safe – including Working With Children Checks, child safe standards and information sharing arrangements.

It reviews the types of institutions that should be covered by reportable conduct schemes with reference to the scope of existing legislation in New South Wales, Victoria and the Australian Capital Territory, and information before the Royal Commission about institutions that may involve a heightened risk of child sexual abuse.

4.6.1 Comparison with scope of related regulatory schemes

Our recommendations for establishing reportable conduct schemes are part of a suite of recommendations to improve institutional reporting of, and responses to, child sexual abuse. Therefore, the scope of reportable conduct schemes needs to be considered in the context of other regulatory schemes that contribute to making institutions child safe, such as Working With Children Checks, child safe standards and information sharing arrangements.

Working With Children Checks are part of an institution's recruitment, selection and screening practices. The regulatory burden on institutions of such checks is minimal, but the risks associated with allowing unscreened individuals to work with children is high.

The Royal Commission has recommended that Working With Children Checks be required for all people engaged in 'child-related work'.³⁰⁰ As set out in the *Working With Children Checks* report, 'child-related work' should be broadly defined. Child-related work should extend to cover, for example, services provided by clubs and associations with a significant membership of, or involvement by, children; coaching or tuition services for children; commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions; and transport services for children, including school crossing services.³⁰¹

In our discussions on child safe standards (Volume 6, *Making institutions child safe*), we recommend that while all institutions should strive to be child safe, only those institutions that engage in child-related work should be required to meet 10 national Child Safe Standards. Standard 6 of the Child Safe Standards relates specifically to complaint handling and responding. To comply with these standards, institutions should have clear, accessible and child-focused complaint handling policies and procedures in place, as discussed in Chapter 3.

We also recommend that an existing independent oversight body in each state and territory should be responsible for monitoring and enforcing the Child Safe Standards, including complaint handling. These regulators should take a responsive and risk-based approach when monitoring compliance with the Child Safe Standards, and where possible, utilise existing regulatory frameworks to monitor and enforce the Child Safe Standards.

Reportable conduct schemes impose a significant regulatory and cost burden on governments and institutions in terms of implementation and maintaining compliance. If reportable conduct schemes have an overly broad scope, they might impose disproportionate cost and resource burdens on governments and institutions, and be unsustainable and ineffective. Accordingly, the recommended scope of reportable conduct schemes is narrower than the categories of institutions required to ensure their personnel have Working With Children Checks and comply with Child Safe Standards.

In our work on exchange of information about the safety and wellbeing of children (Volume 8, *Recordkeeping and information sharing*), we recommend that the Australian Government and state and territory governments make nationally consistent legislative and administrative arrangements in each jurisdiction for a specified range of bodies to share information related to the safety and wellbeing of children. As we discuss in Volume 8, an information exchange scheme can play an important role in complementing and supporting the operation of reportable conduct schemes. In determining the range of prescribed bodies for our recommended information exchange scheme, Australian governments should take into account the scope of reportable conduct schemes.

4.6.2 Institutions that should be covered

With the exception of religious institutions, the categories of institutions we recommend be covered by nationally consistent legislative schemes are included under reportable conduct legislation in New South Wales, Victoria and the Australian Capital Territory.

Lawmakers in these jurisdictions have taken the view that these institutions require additional monitoring and oversight of their complaint handling of child sexual abuse. The explanatory memorandum to the Australian Capital Territory legislation stated that:

The organisations that exercise the closest supervision and authority over children will be ‘designated entities’ under the scheme, including government directorates, government and non-government schools, childcare services, out of home care organisations, and other agencies whose employees work directly with children.³⁰²

Similarly, in explaining why the Victorian reportable conduct scheme does not apply to all organisations that work with children, the Victorian Department of Health and Human Services stated that:

to ensure that the scheme is able to operate effectively, it is proposed that the scheme apply to organisations that exercise the closest care, supervision and authority over children or have limited or no independent oversight.³⁰³

We also heard that complaint handling in these categories of institutions has been problematic, and that independent oversight may improve competency, transparency and accountability.

Accommodation and residential services for children

Accommodation and residential services institutions for children include housing or homelessness services that provide overnight beds for children and young people, and some providers of overnight camps.

For example, the New South Wales legislation covers ‘an agency providing substitute residential care for children’.³⁰⁴ The Victorian legislation covers disability service providers that provide residential services for children with disability; entities that receive funding under a state contract to provide housing services or other assistance to homeless people and overnight beds for people under the age of 18 years; entities that provide overnight camps for children as part of their primary activity and are not ‘youth organisations’ in which children participate, or that provide activities in which children participate; and the residential facilities of boarding schools.³⁰⁵ In the Australian Capital Territory legislation, institutions that are an ‘approved residential care organisation’ are covered.³⁰⁶

In a 2016 special report to New South Wales Parliament, the NSW Ombudsman commented on the definition of ‘substitute residential care’ in light of advice received from the New South Wales Solicitor General.³⁰⁷ The Ombudsman said that the implications of the advice are far-reaching and may be interpreted as meaning that the definition extends to cover religious and sports and recreational institutions that provide camps for children.³⁰⁸

These include institutions such as Scouts Australia (Scouts) and YMCA Australia (YMCA). In *Case Study 47: Institutional review of YMCA NSW*, Ms Lisa Giacomelli, YMCA NSW Chief Risk Officer, stated that, since 2014, YMCA NSW had notified 40 reportable conduct matters to the NSW Ombudsman.³⁰⁹

According to the Ombudsman, ‘the wide range of organisations now deemed to be within the scheme has significant public policy and practical implications that warrant Parliament’s consideration’.³¹⁰ The Ombudsman also stated that stakeholders believe there would be merit in New South Wales Parliament reviewing the scope of the scheme.³¹¹

The Ombudsman stated that institutions that provide similar services to children may be included in or excluded from the scheme based on their legal structure (rather than on the nature of their work with children) and on factors extraneous to children, such as whether an institution uses tents or fixed structures for its camps.³¹² The Ombudsman reported that some stakeholders had argued that ‘this does not represent a sound basis for determining whether an entity ought to fall within the reach of the scheme’.³¹³

In our *Institutional review of Commonwealth, state and territory governments* case study, Mr Coutts-Trotter of the NSW Department of Family and Community Services explained that the scope of the New South Wales scheme was a ‘live issue’.³¹⁴ He told us that there were concerns about the capacity of agencies with limited resources to comply if they come under the scheme on the basis of providing ‘substitute residential care’.³¹⁵ For example:

the Surf Lifesaving movement had practical concerns about their ability, as a volunteer organisation, to give effect to their responsibilities under reportable conduct. So there is, again, this slight tension between a desire to regulate and secure and then the practical response of some organisations to their concerns about being able to operate inside that environment.³¹⁶

Mr Coutts-Trotter said the discussion ‘illustrated for me that there are some questions of practical consideration about the likely response of some children’s services providers to the expansion of the scope of the scheme’.³¹⁷

In our view, uncertainty about the scope of the New South Wales reportable conduct scheme is problematic for stakeholders, and for other state and territory governments looking to use the scheme as a model for their own schemes. The scope of the scheme should be reviewed by the New South Wales Government, using the criteria recommended by the Royal Commission (see Recommendation 7.11).

In particular, while there may be good reason to include institutions such as Scouts and the YMCA, the inclusion of smaller sports and recreation institutions could impose a disproportionate regulatory burden.

Religious institutions

For the purposes of the scope of our recommended reportable conduct scheme, religious institutions are those entities that provide activities or services of any kind under the auspices of a particular religious denomination or faith, through which adults have contact with children.

Under the New South Wales and Australian Capital Territory schemes, religious institutions are not covered except to the extent that they fall under other categories of institutions – for example, because they provide educational or accommodation and residential services. In New South Wales, some religious institutions, such as The Salvation Army, have been considered subject to the reportable conduct scheme – at least since the Solicitor General’s advice on the interpretation of ‘substitute residential care’ in 2014.³¹⁸ In *Case Study 52: Institutional review of Anglican Church institutions*, Mr Lachlan Bryant, Director of the Diocese of Sydney Professional Standards Office, explained that ‘it is only when children are provided with substitute residential care ... that [the Diocese of Sydney] fall under the oversight and purview of the New South Wales Ombudsman’.³¹⁹

In Victoria, the reportable conduct scheme covers entities that are a ‘religious body’ within the meaning of section 81 of the *Equal Opportunity Act 2010* (Vic).³²⁰ This is defined to mean ‘a body established for a religious purpose’ or ‘an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles’.³²¹ An ‘employee’ of a religious body is defined as ‘a minister of religion, a religious leader or an employee ... or officer of the religious body’.³²² The Victorian Government advised us that the scheme captures pastoral work conducted by these employees. In Victoria, the reportable conduct scheme does not apply to an entity that does not exercise care, supervision or authority over children, whether as part of its primary functions or otherwise.³²³ The Victorian Government advised us that, in its view, ‘pastoral care’ is a form of ‘care, supervision or authority’.³²⁴

There is overwhelming information before us that warrants religious institutions being covered by reportable conduct schemes. A high proportion of child sexual abuse cases we heard about in our case studies and private sessions occurred in religious institutions. In our case studies relating to religious institutions, we found evidence of multiple inadequate institutional responses.³²⁵ The particular nature and characteristics of religious institutions, such as the closed governance and complicated legal structures, have also contributed to the heightened risk of child sexual abuse.

Some religious leaders have supported an extension of the New South Wales scheme to cover their churches and community group activities involving children, including bishops from the New South Wales dioceses of the Anglican Church and Catholic Church.³²⁶

In *Case Study 50: Institutional review of Catholic Church authorities*, Catholic archbishops Hart, Coleridge, Wilson and Costelloe expressed support for reportable conduct schemes based on the New South Wales model.³²⁷ In the same case study, the Archbishop of Canberra and Goulburn, Christopher Prowse, stated that he supported the New South Wales reportable conduct scheme and had been advocating for it to be adopted in the Australian Capital Territory.³²⁸ Archbishop Prowse gave evidence that:

the government structures that are up now and the legislation, which is very helpful, helps us to say – I, as archbishop, for instance, can't be making unilateral decisions about these matters without going to these other instrumentalities and working through it in that way.³²⁹

In *Case Study 55: Institutional review of Australian Christian Churches and affiliated Pentecostal churches*, Mr Kirk Morton, the risk and compliance coordinator for Hillsong Church, stated that the Victorian reportable conduct scheme 'fairly and squarely' includes religious institutions within its scope.³³⁰ He believed that religious institutions would be 'just as secure' in the New South Wales reportable conduct scheme.³³¹

Childcare services

Childcare services institutions include approved education and care services under the Education and Care Services National Law and approved occasional care services.

The New South Wales legislation covers an approved education and care service within the meaning of the Education and Care Services National Law.³³² The Victorian and ACT legislation also cover these services.³³³

In addition, the Victorian legislation refers to a 'children's service within the meaning of the *Children's Services Act 1996* (Vic)'.³³⁴ This brings providers of occasional care under its reportable conduct scheme.

Child protection services and out-of-home care

Child protection services and out-of-home care institutions include child protection authorities and agencies; providers of foster care, kinship or relative care; providers of family group homes; and providers of residential care.

The New South Wales legislation covers, for example, parts of the Department of Family and Community Services³³⁵ and designated agencies within the meaning of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), including accredited providers of out-of-home care.³³⁶ The Victorian legislation covers out-of-home care services within the meaning of the *Children, Youth and Families Act 2005* (Vic) and entities that receive funding under a state contract to provide child protection services.³³⁷ The Australian Capital Territory legislation covers ‘any administrative unit that deals with the safety, welfare or wellbeing of a particular child or class of children’, approved kinship and foster care organisations and approved residential care organisations.³³⁸

In Case Study 17: The response of the Australian Indigenous Ministries, the Australian and Northern Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home, Dr Howard Bath, former Northern Territory Children’s Commissioner, told us:

it is important that there is an independent review of what actually occurs in terms of abuse in care, because there is at least a perceived conflict of interest if the department is investigating its own workers or people who are working for the department.³³⁹

Disability services and supports for children with disability

Institutions providing disability services and supports for children with disability include disability service providers under state and territory legislation and registered providers of supports under the National Disability Insurance Scheme (NDIS).

The New South Wales legislation covers that part of the Department of Family and Community Services administered by the Minister for Disability Services.³⁴⁰ In Victoria, the legislation is stated to cover disability service providers within the meaning of the *Disability Act 2006* (Vic), including those that provide residential services for children with disability³⁴¹ and other entities that provide disability services.³⁴² The provisions of the Australian Capital Territory legislation covering ‘any administrative unit that deals with the safety, welfare or wellbeing of a particular child or class of children’ and ‘health service providers’ would cover some disability services.³⁴³

In our *Institutional review of Commonwealth, state and territory governments* case study, Ms Kym Peake of the Department of Health and Human Services, Victoria confirmed that the Victorian scheme would cover services registered under the NDIS.³⁴⁴

Registered providers of supports under the NDIS³⁴⁵ should be explicitly covered by state and territory reportable conduct schemes. Services for people with disability will increasingly be provided under the NDIS, under individual funding plans, and may include ‘general supports’ which may not fall within the ordinary meaning of disability services.³⁴⁶

The NDIS Quality and Safeguarding Framework provides for regulation that is proportionate to the risk associated with the type of support offered. Priority is to be given to the requirements for higher risk providers to report serious incidents such as alleged physical or sexual assault or serious unexplained injury to a NDIS complaints commissioner.³⁴⁷ We have heard about the need for Australian Government oversight as the NDIS and related regulation is implemented, given the possible inconsistencies in safeguards between states and territories.³⁴⁸

Education services for children

Institutions offering education services for children include government and non-government schools, TAFEs (Australia’s largest vocational education and training provider) and other institutions registered to provide senior secondary education or training, courses for international students or student exchange programs.

The New South Wales legislation covers ‘the Department of Education (including a government school)’; ‘a non-government school within the meaning of the *Education Act 1990*’³⁴⁹ and the TAFE Commission.³⁵⁰ The Victorian legislation covers registered schools, organisations accredited or registered to provide senior secondary education or training, approved providers of courses for overseas students and approved student exchange programs.³⁵¹ The Australian Capital Territory legislation covers ‘a government school or a non-government school’.³⁵²

In New South Wales, the schools sector was the source of one-third to one-half (32–52 per cent) of reportable allegations notified to the Ombudsman over the five years to 2015.³⁵³ Of all sexual misconduct allegations received in this period, 61 per cent involved schools.³⁵⁴

Our work has shown that some types of schools may require more support in handling complaints of child sexual abuse. The NSW Ombudsman informed us that:

An area of potential risk in the independent schools sector concerns the practices of independent schools not affiliated with the AIS, CEN or CSA [Association of Independent Schools, Christian Education National or Associated Schools of New South Wales], and/or schools which are under-represented or entirely absent in the notification data. The risk is particularly amplified for newer and/or small schools given that, in general, they are less likely to have experience in handling reportable conduct matters.³⁵⁵

Health services for children

Institutions that provide health services for children include government health departments and agencies, and statutory corporations; public and private hospitals; and providers of mental health and drug or alcohol treatment services that have inpatient beds for children and young people.

For example, the New South Wales legislation covers: the Ministry of Health; local health districts; statutory health corporations; the Ambulance Service of NSW; and affiliated health organisations.³⁵⁶ The Victorian legislation covers a mental health service provider within the meaning of the *Mental Health Act 2014* (Vic) that provides inpatient beds for children and young people; an entity that receives funding under a state contract to provide drug or alcohol treatment services with inpatient beds for children and young people; and public and private hospitals.³⁵⁷ The Australian Capital Territory legislation covers any ‘health service provider’, in addition to any administrative unit that deals with the safety, welfare or wellbeing of a particular child or class of children.³⁵⁸

Justice and detention services for children

Institutions that provide justice and detention services for children include youth detention centres and immigration detention facilities.

The New South Wales legislation covers Corrective Services and Juvenile Justice NSW.³⁵⁹ The Victorian legislation covers any department within the meaning of the *Public Administration Act 2004* (Vic) – which includes Youth Justice and Corrections Victoria.³⁶⁰ The Australian Capital Territory legislation covers any administrative unit that deals with the safety, welfare or wellbeing of a particular child or class of children, which would cover youth detention in the territory.³⁶¹ It does not appear that any of this legislation covers immigration detention facilities funded or delivered by the Australian Government.

We consider that immigration detention facilities run by the Australian Government should come under any relevant state and territory reportable conduct scheme. It is preferable that the state or territory oversight body that administers the scheme should facilitate the compliance of Commonwealth-run immigration detention facilities operating in their jurisdiction. State and territory oversight bodies have expertise in oversight of institutional complaint handling and are equipped to regulate the safety of children in institutions.

We acknowledge that constitutional issues can arise in the application of state and territory law to Commonwealth-run institutions. If this happens, the Australian Government should work with state and territory governments to ensure that its immigration detention facilities fall under state and territory reportable conduct schemes. This could be achieved by the Australian Government:

- legislating to require Commonwealth-run immigration detention facilities to comply with state and territory reportable conduct schemes, while leaving the regulation of the schemes at the state and territory level
- entering a memorandum of understanding with state and territory governments.

If Commonwealth-run immigration detention facilities are not able to be placed under state and territory reportable conduct schemes, the Australian Government should look at other ways to ensure that complaint handling in its immigration detention facilities is subject to independent oversight.

4.6.3 Other institutions

The recommended scope of reportable conduct schemes is narrower than the types of institutions required to comply with the Child Safe Standards.

We do not recommend that institutions providing the following services come within the scope of reportable conduct schemes:

- activities and services provided by clubs and associations with a significant membership of, or involvement by, children
- coaching or tuition services for children
- commercial services for children
- transport services for children.

Some of these services may nevertheless be covered if they are ancillary to other services that are covered – for example, transport services that are ancillary to a disability service.

Given the limited evidence before us relating to these types of institutions, we believe that it would be a disproportionate regulatory burden to require that they be subject to additional oversight through reportable conduct schemes. In reaching this conclusion we also considered:

- the relatively lower responsibility that these institutions have for the care, protection and supervision of children
- the significant regulatory burden that reportable conduct schemes place on institutions that have a high membership base and low resources, or that operate as sole traders or small businesses

- the large number and diverse nature of institutions in this group, which could make regulation by government impractical
- the potentially limited capacity of an oversight body to engage with and support these institutions in addition to the types of institutions that we recommend be covered
- the fact that most of these institutions are not covered by the existing New South Wales, Victorian and Australian Capital Territory schemes.

These or other additional types of institutions may be covered by reportable conduct schemes in the future. We recommend that state and territory governments periodically review the operation of reportable conduct schemes, including to determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse (see Recommendation 7.11).

Other existing and recommended regulatory mechanisms will ensure that institutions whose employees engage in child-related work, but are not covered by reportable conduct schemes, are nevertheless encouraged to improve their responses to, and reporting of, child sexual abuse.

Importantly, such institutions would be obliged to meet the Child Safe Standards recommended in Volume 6, *Making institutions child safe*, including complaint handling (Standard 6), and would be subject to monitoring and enforcement of these standards by an independent oversight body. In addition, individuals working in these institutions may be subject to Working With Children Checks and may have obligations to report child sexual abuse to child protection authorities under mandatory reporting legislation, or to the police subject to reporting offences.

Recommendation 7.12

Reportable conduct schemes should cover institutions that:

- exercise a high degree of responsibility for children
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.

At a minimum, these should include institutions that provide:

- a. accommodation and residential services for children, including
 - i. housing or homelessness services that provide overnight beds for children and young people
 - ii. providers of overnight camps
- b. activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children

- c. childcare services, including
 - i. approved education and care services under the Education and Care Services National Law
 - ii. approved occasional care services
- d. child protection services and out-of-home care, including
 - i. child protection authorities and agencies
 - ii. providers of foster care, kinship or relative care
 - iii. providers of family group homes
 - iv. providers of residential care
- e. disability services and supports for children with disability, including
 - i. disability service providers under state and territory legislation
 - ii. registered providers of supports under the National Disability Insurance Scheme
- f. education services for children, including
 - i. government and non-government schools
 - ii. TAFEs and other institutions registered to provide senior secondary education or training, courses for overseas students or student exchange programs
- g. health services for children, including
 - i. government health departments and agencies, and statutory corporations
 - ii. public and private hospitals
 - iii. providers of mental health and drug or alcohol treatment services that have inpatient beds for children and young people
- h. justice and detention services for children, including
 - i. youth detention centres
 - ii. immigration detention facilities.

4.7 Supporting implementation

Several factors are important in facilitating the implementation and supporting the operation of reportable conduct schemes.

4.7.1 Phased implementation

A reportable conduct scheme has administrative and cost implications for institutions and governments. It will take time for governments to mobilise the necessary machinery for implementing their schemes. Further, institutions will need time to understand what is required and how they can implement the scheme in their context.

Accordingly, a phased approach to implementation may be desirable. For example, the Victorian scheme is being introduced in three phases from July 2017:³⁶²

Phase 1 – From 1 July 2017 the scheme will apply to child protection and family services, out-of-home care services, youth justice services, residential services for children with disability, certain education providers, government and non-government schools and government departments.

Phase 2 – From 1 January 2018 the scheme will apply to hospitals, other disability services for children, providers of overnight camps, religious bodies and the residential facilities of boarding schools.

Phase 3 – From 1 January 2019 the scheme will apply to early childhood services and statutory bodies that have responsibility for children, such as public museums and galleries.

4.7.2 Adequate funding and resourcing

Adequate funding and resourcing is needed for supporting the implementation and operation of reportable conduct schemes.

The oversight body must have sufficient funding and resourcing. The Australian Capital Territory Government identified additional resourcing of the Ombudsman's office as a priority in implementing its reportable conduct scheme. The Government budgeted \$1.3 million for its scheme in the 2016–17 budget.³⁶³ In 2014, Mr Kinmond told us that the cost of the New South Wales scheme for the 2014–15 financial year was \$2.17 million.³⁶⁴

Some state and territory governments expressed concern about the cost and resourcing implications of a scheme similar to the New South Wales model.³⁶⁵ The Tasmanian Government told us that the establishment and administrative costs of a scheme would need to be evaluated against other oversight mechanisms.³⁶⁶ The Northern Territory Government submitted:

Recent calls for a nationally consistent reportable conduct scheme could have significant cost and structural implications for the Northern Territory if the comprehensive nature of the current New South Wales scheme is taken as a proposed model.³⁶⁷

We also heard that investment is required to build the capacity of institutions to implement the scheme effectively.³⁶⁸ Some stakeholders expressed concern about what would happen if an institution did not have the capacity to comply with a scheme due to cost and resource constraints³⁶⁹ – for example, when an institution does not have the capacity to investigate allegations of child sexual abuse and finds the cost of hiring an external investigator prohibitive.³⁷⁰

We heard that the cost of complying with the New South Wales scheme is a challenge for some institutions.³⁷¹ The Ombudsman noted that a number of institutions with low revenue streams and high membership face particular funding and resourcing challenges when responding to complex allegations.³⁷² We also heard that some non-government out-of-home care providers lack the resources to deal with the scheme.³⁷³ One non-government stakeholder from the out-of-home care sector expressed the view that a mechanism is needed to recognise the cost impost on institutions.³⁷⁴

The NSW Ombudsman has suggested that, for the sports and recreation sector, there would be merit in the New South Wales Government exploring the potential benefits ‘of establishing a single entity, similar to a peak body, to conduct certain complex investigations, provide advice on risk management, develop policies, and deliver training’.³⁷⁵ The Ombudsman said this would be a better approach than ‘funding a large and disparate number of individual organisations for this purpose’.³⁷⁶

4.7.3 Stakeholder engagement and capacity building

Stakeholder engagement through forums, meetings, training, education strategies and other forms of dialogue and information exchange is important for the effective operation of reportable conduct schemes.

Stakeholder engagement is the primary means by which the government and the oversight body can support institutions in complying with the scheme. Stakeholder engagement develops institutions’ understanding of the scheme, its purpose, how it is intended to operate and their obligations under it. Engagement builds institutions’ capacity to comply and provides an opportunity to address any concerns that could affect willingness to comply.

We heard that in jurisdictions that have implemented reportable conduct schemes, some institutions or sectors resisted because of concerns about enhanced scrutiny and monitoring, incursions on privacy, and a view that existing mechanisms were sufficient.³⁷⁷ Some institutions feared it would be easier for employers to dismiss employees and that employees may unfairly lose their jobs if a reportable allegation was made against them.³⁷⁸ The government and oversight body engaged with these stakeholders to address such concerns and build understanding of the scheme, so that institutions felt confident in their knowledge of the scheme and the implementation process.³⁷⁹

Stakeholder engagement offers institutions an opportunity to shape the development and implementation of the scheme. It helps the government and oversight body assess different options and adjust the scheme as necessary; and it encourages institutions to advocate for legislative and policy reforms that will make the scheme operate more effectively for them.

Good working relationships between the oversight body, institutions and other government stakeholders through stakeholder engagement supports effective implementation and operation of reportable conduct schemes. In *Case Study 38 in relation to criminal justice issues*, NSW Deputy Ombudsman, Mr Kinmond, observed that the oversight body:

must be committed to providing practical support in these cases. They might be dripping with power, they might have excellent skills, but they have to be responsive to risks that emerge and they have to forge strong relationships with the agencies, the institutions that have the responsibility to protect children. If the oversight body thinks that it is the oversight body that is important and not the institutions that are at the coalface, that are serving children, then that oversight body should not be in business.³⁸⁰

The oversight body's relationships with institutions are a key source of intelligence about potential risks to children. Further, if recommendations by the oversight body are non-binding, strong working relationships that foster goodwill and build trust are critical for ensuring recommendations are respected and acted upon by institutions.

4.7.4 Legislative alignment

The implementation and operation of reportable conduct schemes should be supported by proper alignment with related legislation. State and territory governments need to map laws that will interact with or be affected by the introduction of a reportable conduct scheme.

For example, reportable conduct scheme legislation needs to be compatible with legislation regulating Working With Children Check schemes, carers registers, and mandatory and other reporting obligations so that institutions do not have to duplicate reports to multiple government authorities.

Some New South Wales institutions that come under the reportable conduct scheme expressed concern about the complexity of oversight, and possible duplication in reporting obligations in cases where an institution must report complaints of child sexual abuse to multiple bodies.³⁸¹ For example, non-government out-of-home care service providers must report a sustained finding of sexual assault to the NSW Office of the Children’s Guardian and the NSW Ombudsman.³⁸² According to AbSec, in New South Wales ‘this complexity without appropriate investment in development of a sector, adds undue pressure to a system that can fail or be distracted by differing, yet similar, requirements of oversight bodies’.³⁸³

In our view, these reporting obligations fulfil different purposes specific to the roles and functions of the Ombudsman and the Children’s Guardian in their administration of each scheme and are not a duplication as such. Nevertheless, we consider that fulfilling multiple reporting obligations could be made simpler – for example, by using technology to improve interoperability between bodies that receive obligatory reports.

State and territory governments should consider any legislative gaps that need to be addressed for the scheme to operate smoothly, including the need for new information sharing provisions. Information sharing provisions in New South Wales play a critical role in supporting the operation of the reportable conduct scheme.

During development of its reportable conduct scheme, the Australian Capital Territory Government recognised that it needed to introduce information sharing provisions to help the scheme operate and integrate with the *Working with Vulnerable People (Background Checking) Act 2011* (ACT).³⁸⁴

The *Ombudsman Act 1989* (ACT) was amended to allow the Ombudsman to share child protection-related information with the Commissioner for Fair Trading, the Australian Capital Territory Human Rights Commission, relevant directors-general, law enforcement agencies, the chief police officer, and the CEO of the Australian Capital Territory Teacher Quality Institute.³⁸⁵ In addition, the *Working with Vulnerable People (Background Checking) Act 2011* (ACT) allows the Commissioner for Fair Trading, who administers the Working with Vulnerable People Check, to request information from entities to assist in conducting a risk assessment for a person.³⁸⁶ The Act authorises the Commissioner for Fair Trading to share information with prescribed entities and for entities to provide information to the Commissioner for Fair Trading.³⁸⁷ Designated entities under the reportable conduct scheme are able to share information and work together to better protect children.³⁸⁸

There are other laws that may conflict with reportable conduct schemes. For example, stakeholders identified aspects of industrial relations legislation as potentially conflicting.³⁸⁹ It was suggested that, in New South Wales, unfair dismissal laws can make it difficult for agencies to dismiss employees who have been found to have engaged in reportable conduct with a child.³⁹⁰

One solution is to enact a ‘paramountcy principle’.³⁹¹ For example, the *Teaching Service Act 1980* (NSW) provides that the ‘protection of children is to be the paramount consideration’ in ‘taking any action with respect to an officer or temporary employee’ and this provision ‘has effect despite anything in the *Industrial Relations Act 1996* (NSW) or any other Act or law’.³⁹²

Victoria’s reportable conduct scheme legislation contains a paramountcy principle. The legislation provides that a fundamental principle of the scheme is that ‘the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child’.³⁹³ The New South Wales and Australian Capital Territory governments should consider including a similar principle in their reportable conduct scheme legislation in order to ensure the protection of children is paramount when responding to institutional child sexual abuse.

4.7.5 Staying child focused

Reportable conduct schemes need to keep a clear focus on children and child-focused messages in order to operate effectively.³⁹⁴ It has been suggested that, over time, the New South Wales scheme has become more complicated and legalistic, potentially without prioritising the protection of children.³⁹⁵ For example, the Ombudsman has described the scope of the scheme, as interpreted by the New South Wales Solicitor General, as ‘being determined by factors extraneous to risks to children’.³⁹⁶

Staying child focused requires schemes to adapt to risks that emerge from changes in the way children communicate and interact with institutions’ employees. For example, we heard that the NSW Ombudsman’s definition of grooming should consider what constitutes acceptable and unacceptable conduct between children and employees on social media.³⁹⁷

For institutions, staying child focused should be an important part of complying with the scheme. Institutions should have child-focused approaches embedded in their culture, governance, policies and procedures. In particular, children need to be the focus of any complaint handling process – as identified in our work on complaint handling – so that agencies do not lose sight of child victims and the support they require during a reportable conduct investigation.

The Victorian reportable conduct scheme legislation states that ‘the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child’.³⁹⁸ This statement is consistent with Australia’s obligations under the United Nations Convention on the Rights of the Child, which provides that the best interests of the child is a primary consideration in all actions and decisions concerning children.³⁹⁹ Arguably, a similar principle should be inserted into other state and territory legislation establishing reportable conduct schemes.

4.7.6 Choice of oversight body

In our view, the oversight body for a reportable conduct scheme in each state and territory should also be responsible for monitoring and enforcing the Child Safe Standards. This is the case in Victoria, where the Commission for Children and Young People is also responsible for the oversight and enforcement of compliance with the Child Safe Standards under Part 6 of the *Child Wellbeing and Safety Act 2005* (Vic). This ensures that institutions inside and outside the reportable conduct scheme are given consistent advice and guidance on complaint handling policies and procedures.

There may also be advantages in the same oversight body administering Working With Children Checks. However, this is not currently the case under New South Wales, Victorian or Australian Capital Territory legislation.

The screening agency for Working With Children Checks in these jurisdictions is the Office of the Children's Guardian under the *Child Protection (Working with Children) Act 2012* (NSW); the Working with Children Unit, Department of Justice and Regulation under the *Working with Children Act 2005* (Vic); and the Commissioner for Fair Trading under the *Working with Vulnerable People (Background Checking) Act* (ACT).

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APPENDICES

Appendix A Legislative developments in mandatory reporting laws, 1969–2014

Table A.1 – Legislative developments in mandatory reporting laws, 1969–2014¹

Jurisdiction	Date mandatory reporting duty was first introduced, relevant legislation	Major changes to legislation
Commonwealth	24 April 1991 <i>Family Law Act 1975</i> (Cth) as amended by <i>Family Law Amendment Act 1991</i> (Cth). Imposes reporting duty on members of court personnel (s 70BB).	<i>Family Law Reform Act 1995</i> (Cth) s 67ZA re-enacts s 70BB, but extends it to family and child counsellors and family and child mediators. Commenced 11 June 1996. <i>Family Law Act 1975</i> (Cth) s 67ZA imposes the reporting duty on the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia; the Registrar or a Deputy Registrar of the Family Court of Western Australia; a Registrar of the Federal Circuit Court of Australia; a family consultant; a family counsellor; a family dispute resolution practitioner; an arbitrator; a lawyer independently representing a child's interests.
New South Wales	1 July 1977 <i>Child Welfare (Amendment) Act 1977</i> (NSW) required medical practitioners to report 'reasonable grounds to suspect that a child has been assaulted, ill-treated or exposed'. Schedule 5 added s 148B to the <i>Child Welfare Act 1939</i> (NSW).	<i>Children (Care and Protection) Act 1987</i> (NSW) s 22 and regulations place doctors under duty to report child sexual abuse; teachers and other school staff are also required to report child sexual abuse. Commenced 18 January 1988. <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) sets out a new legislative reporting framework. Commenced 18 December 2000. <i>Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009</i> (NSW) amended s 23 to restore intended focus on significant harm; also removes penalty for noncompliance. Commenced 24 January 2010.

Jurisdiction	Date mandatory reporting duty was first introduced, relevant legislation	Major changes to legislation
Victoria	<p>4 November 1993; 18 July 1994</p> <p><i>Children and Young Persons (Further Amendment) Act 1993</i> (Vic) s 4. This Act amended the <i>Children and Young Persons Act 1989</i> (Vic) and commenced generally on 11 May 1993, but the reporting provisions commenced later, at various stages for different reporter groups. On 4 November 1993, the mandatory reporting duty commenced for medical practitioners, nurses and police officers. On 18 July 1994, the duty commenced for teachers and school principals.</p>	<p><i>Children, Youth and Families Act 2005</i> (Vic) replaced <i>Children and Young Persons (Further Amendment) Act 1993</i> (Vic) from 23 April 2007.</p> <p>The duty to report has not commenced for some groups stated in the Act because they have yet to be gazetted as mandatory reporters.</p>

Jurisdiction	Date mandatory reporting duty was first introduced, relevant legislation	Major changes to legislation
Queensland	<p>14 June 1980</p> <p><i>Health Act 1937</i> (Qld), as amended by <i>Health Act Amendment Act 1980</i> (Qld) s 4 – for ‘medical practitioners’ only.</p>	<p><i>Education (General Provisions) Act 2006</i> (Qld): School staff including teachers are required for the first time to report suspected sexual abuse, but only if committed by school staff members. Commenced 19 April 2004.</p> <p><i>Public Health Act 2005</i> (Qld): Major amendment adding nurses to doctors as mandatory reporters of all suspected cases of child sexual abuse, and clarifying doctors’ duty to report child sexual abuse. Commenced 31 August 2005.</p> <p><i>Education and Training Legislation Amendment Act 2011</i> (Qld): Major amendment requiring school staff including teachers to report all suspected cases of child sexual abuse regardless of perpetrator identity; previous limit removed. Commenced 9 July 2012.</p> <p><i>Child Protection Reform Amendment Act 2014</i> (Qld) makes designated police personnel mandatory reporters. Amendment made in <i>Child Protection Act 1999</i> (Qld) s 13E(1)(d). Commenced 19 January 2015.</p>
Western Australia	<p>1 January 2009</p> <p><i>Children and Community Services Act 2004</i> (WA) as amended by <i>Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008</i> (WA).</p>	<p>The <i>Children and Community Services Legislation Amendment and Repeal Act 2015</i> (WA) added boarding supervisors as mandatory reporters. Commenced 1 January 2016.</p>

Jurisdiction	Date mandatory reporting duty was first introduced, relevant legislation	Major changes to legislation
South Australia	<p>27 November 1969</p> <p><i>Children's Protection Act Amendment Act 1969</i> (SA), amended the <i>Children's Protection Act 1936–1965</i> (SA) s 3, inserting new provisions into the principal Act (then called the <i>Children's Protection Act 1936–1969</i>).</p> <p>The original duty which was imposed on medical practitioners and dentists was limited to children under the age of 12 and applied only to ill-treatment of a child by parents or caregivers.</p>	<p><i>Community Welfare Act 1972</i> (SA) described the offence of a parent neglecting or ill-treating a child in s 72, and the duty to report such ill-treatment in s 73; the duty to report was limited to doctors and dentists who suspected on reasonable grounds such offences against a child under the age of 15. This Act repealed the <i>Child Protection Act 1936</i> (SA), the <i>Children's Protection Act Amendment Act 1961</i> (SA) and the <i>Children's Protection Act Amendment Act 1969</i> (SA). Commenced 1 July 1972.</p> <p><i>Community Welfare Act Amendment Act 1976</i> (SA) amended the <i>Community Welfare Act 1972–1975</i> (SA) to insert s 82d duty to report, and s 82e definition of the relevant offences against children. Commenced 7 April 1977.</p> <p><i>Community Welfare Act Amendment Act 1981</i> (SA) amended the <i>Community Welfare Act 1972–1979</i>, substituting s 91 duty to report and s 92 definition of the relevant offences against children. Commenced 2 May 1983.</p> <p><i>Community Welfare Act Amendment Act 1988</i> (SA) amended the <i>Community Welfare Act 1972</i> (SA). Major amendments broadened the scope of the reporting duty to cases of child sexual abuse inflicted by any person, removing the prior limit of maltreatment by parents and caregivers. Commenced 1 September 1988.</p> <p><i>Children's Protection Act 1993</i> (SA) repealed prior Acts. Major amendments set out clear, broad reporting duty in s 11; with key definitions placed in ss 6 and 10. Commenced 1 January 1994.</p>

Jurisdiction	Date mandatory reporting duty was first introduced, relevant legislation	Major changes to legislation
South Australia		<p><i>Children's Protection (Mandatory Reporting and Reciprocal Arrangements) Amendment Act 2000</i> (SA) amended s 11 to add pharmacists in s 11(2)(ab). Commenced 1 July 2000.</p> <p><i>Children's Protection (Miscellaneous) Amendment Act 2005</i> (SA) increased the penalty to \$10,000. In another major amendment, this Act added new reporter groups: ministers of religion (excluding suspicions developed via the confessional); and employees and volunteers in organisations formed for religious or spiritual purposes. Commenced 31 December 2006.</p>
Tasmania	<p>22 October 1975</p> <p><i>Child Protection Act 1974</i> (Tas) s 8(2), with selected reporter groups proclaimed by Statutory Rule via <i>Child Protection Order 1975</i>, made on 14 October, notified in the Gazette on 22 October 1975.</p>	<p><i>Child Protection Amendment Act 1986</i> (Tas) s 12 removed the age limit of 12 years, replaced the concept of 'cruel treatment' with 'maltreatment' (including explicit definitions of sexual abuse), and added a duty to report substantial risk of maltreatment as well as maltreatment that had already been experienced. Commenced 8 April 1987.</p> <p><i>Children, Young Persons and Their Families Act 1997</i> (Tas) broadened the list of reporters and gave more detailed provisions on the reporting duty. Commenced 1 July 2000.</p> <p><i>Dental Practitioners Registration Act 2001</i> (Tas) added dental therapists and hygienists as reporters. Commenced 3 October 2001.</p> <p><i>Police Service (Consequential Amendments) Act 2003</i> (Tas) added midwives as reporters. Commenced 1 July 2010.</p>

Jurisdiction	Date mandatory reporting duty was first introduced, relevant legislation	Major changes to legislation
Australian Capital Territory	<p>1 June 1997</p> <p><i>Children's Services Ordinance 1986</i> (ACT) contained the s 103(2) mandatory reporting provision, but this only commenced via the <i>Children's Services Act 1986</i> (ACT) s 103(2), effective 1 June 1997.</p>	<p>No major changes since 1 June 1997 except to add midwives (from 18 November 2006) and home education inspectors (from 30 September 2010) as reporters.</p>
Northern Territory	<p>20 April 1984</p> <p><i>Community Welfare Act 1983</i> (NT) required all citizens to make reports; the police had a similar obligation under another provision. The duty was limited to cases where a person not only believed on reasonable grounds that a child had been sexually abused, but also that the child's parents, guardians or custodians 'are unable or unwilling to protect' the child.</p>	<p><i>Care and Protection of Children Act 2007</i> (NT) removed the qualification about the protective parent which limited the reporting duty; also added further definitions of sexual abuse. Commenced 8 December 2008.</p> <p><i>Care and Protection of Children Amendment Act 2009</i> (NT) adds duty to report selected scenarios of sexual abuse, including a special duty for health practitioners. Commenced 1 September 2009.</p>

Endnotes

- 1 This table is based on 'Table 2: Different times when a mandatory reporting duty was first introduced, and summary of major changes: Australian states and territories' in B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, pp 8–11.



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