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Royal Commission into Institutional Responses to Child Sexual Abuse
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Dear Commissioners

Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts

Thank you for the opportunity to respond to the Royal Commission's *Consultation Paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts* and for providing our office with an extension of time within which to do so. We welcome the Commission's focus on this critical area of child protection practice.

Our response to the Consultation Paper is informed by our relevant jurisdiction. As you know, the NSW Ombudsman's main functions are to handle complaints about a large range of government and non-government organisations; oversee and monitor investigations by agencies; and scrutinise relevant systems.

Our jurisdiction includes a broad range of functions relating to child protection in NSW. These functions are primarily established by the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, under which we are responsible for monitoring and reviewing the delivery of community services, and Part 3A of the *Ombudsman Act 1974*, which requires us to handle child abuse and neglect allegations against employees¹ of more than 7,000 government and non-government agencies, and to scrutinise their systems for preventing and responding to such allegations.² In 2012, we also completed a three-year legislated audit of the *NSW Interagency Plan for Responding to Child Sexual Abuse in Aboriginal Communities*. We have comprehensively described these functions and our related work in previous submissions and statements to the Commission.³

¹ In this context, an 'employee' is defined broadly as including: 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).

² The NSW Solicitor-General recently clarified the reach of our jurisdiction and advised us that '[O]n its face the notion of "substitute residential care" in the care of children would appear to extend to any arrangement where an organisation has the care and control of children of a kind that would otherwise be provided by parents and caregivers, were a child in his or her place of residence. This advice has greatly increased the number of agencies and individuals deemed to fall within our employment-related child protection jurisdiction. We are currently working with organisations in the recreational camping and youth sectors, together with religious and other volunteer organisations, which run camps falling within the scope of this advice.

³ In particular, see our January 2014 submission on Issues Paper 4; Part 1 of our February 2015 statement of information concerning Case Study 23 (Knox Grammar School) and March 2014 statement concerning Case Study 38.

You would be aware that in November 2014, our office met with WestWood Spice to inform its research for the Commission about best practice in responding to complaints of child sexual abuse. In previous submissions to the Commission, we have provided confidential examples of agencies' failure to appropriately respond to complaints about child sexual abuse - including historical reports made by adult victims - highlighting both the reasons for the poor practice and the related systems changes which are required. We have also detailed our proactive work with agencies in relation to enhancing their response to individual matters and in achieving the necessary reforms more broadly.⁴ In this regard, I note that the Consultation Paper refers to evidence gathered by the Commission about agencies' lack of complaint-handling procedures and/or failure to adhere to relevant procedures; failure to report criminal allegations to Police; poor communication with affected parties; and poor record keeping. These are all issues that we have previously brought to the attention of the Commission.

In light of the information we have already provided to the Commission, we have primarily confined our feedback on the current Consultation Paper to responding to the invitation to provide submissions on:

- the value of independent oversight mechanisms such as reportable conduct schemes, and
- ways to improve smaller institutions' access to advice and support when responding to complaints of child sexual abuse.

1. The value of independent oversight mechanisms such as reportable conduct schemes

In inviting submissions about the value of independent mechanisms for overseeing the handling of complaints about child sexual abuse, the Consultation Paper highlights the reportable conduct scheme in NSW, noting that Victoria and the ACT intend to establish similar schemes, and that other jurisdictions have also expressed support for the scheme.⁵ We note that the Commission has engaged KPMG to undertake a research project about whether reportable conduct schemes should be implemented nationally⁶ and, of direct relevance to this issue, the announcement by the Coalition of Australian Governments (COAG) on 1 April 2016 of its agreement '*in-principle, to harmonise reportable conduct schemes, similar to the current model in operation in NSW and announced in the ACT and Victoria.*'⁷

As outlined in our April 2016 submission in response to the Commission's OOHC Consultation Paper, we believe that reportable conduct schemes are an essential component of the framework for employment-related child protection. In that submission – and in numerous other submissions and statements to the Commission, including my March 2016 statement and evidence in relation to Case Study 38⁸ – we have outlined some of the benefits of the reportable conduct scheme in NSW, including details of particular initiatives we have implemented to support agencies in responding to allegations of serious reportable conduct. In addition, Chapter 3 of our February 2016 report to Parliament, *Strengthening the oversight of workplace child abuse allegations* includes an overview of the reasons for the reportable conduct scheme's effectiveness.⁹

In summary, we suggest that the reportable conduct scheme in NSW has added value by:

- Prompting agencies to establish systems to prevent, detect, and respond to abuse.
- Facilitating the systematic identification and reporting of abuse.

⁴ NSW Ombudsman statement of February 2015 concerning Case Study 23(Knox Grammar School).

⁵ As noted in our April 2016 submission on the Commission's OOHC Consultation Paper, we have provided advice and support to representatives of the Victorian and ACT governments with responsibility for establishing reportable conduct schemes in those jurisdictions.

⁶ We met with KPMG on 4 April 2016 and have provided a range of information to inform the research project.

⁷ COAG communiqué, 1 April 2016.

⁸ See also our statement of February 2015 concerning Case Study 23(Knox Grammar School).

⁹ NSW Ombudsman, *Strengthening the Oversight of Workplace Child Abuse Allegations*, February 2016.

- Enhancing the WWCC system by providing important information to the Children’s Guardian about individuals who may pose a risk to children.
- Enhancing risk management of individuals the subject of allegations.
- Providing Police, FACS and other stakeholder agencies with critical information, as a result of our access to Police and FACS databases and our use of our extensive powers to both obtain and exchange relevant information.
- Facilitating ongoing practice development across different sectors, and capacity building both within and across sectors.
- Allowing the identification of important systems issues (for example, we have successfully advocated for more efficient and effective information sharing provisions; the need to improve the screening of foster carers and household members; and the need for FACS to improve its policy and practice in relation to its staff reporting criminal child abuse allegations to Police).

We have also sought to provide detailed evidence of the reportable conduct scheme’s value in terms of enhancing criminal investigative responses, and in ensuring appropriate responses in matters which do not result in a criminal charge and/or conviction but where potential risks to children still exist.

Recognition of the value of the reportable conduct scheme – and a strong call for a nationally consistent approach to reportable conduct – was one of the most significant themes to emerge from the Reportable Conduct Forum we hosted in Sydney on 26 February 2016. The forum brought together almost 800 representatives from across the education, out-of-home care, disability, early childhood, religious, sporting and recreation sectors, and provided an opportunity to explore the strengths and weaknesses of the reportable conduct scheme over its 16 years of operation in NSW.

Our February 2016 report to Parliament also noted the consistent feedback we have received from our stakeholders about the value of the reportable conduct scheme and the desirability of expanding its reach. For example, in November 2015, the Most Reverend William Wright, Bishop of the Catholic Diocese of Maitland-Newcastle, wrote to the NSW Attorney-General on behalf of the leaders of the 11 NSW Catholic Dioceses noting that:

While our schools and out-of-home care services have been subject to Part 3A of the [Ombudsman Act], thus affording enhanced protection for children in those circumstances, it has been an anomaly that the core of our churches, our parishes and various communities of faith, have been largely excluded from the scrutiny and support of the Ombudsman’s office with consequent potential risk implications for children...

More recently, in April 2016, Mr Matt Casey, Director of the Institute for Professional Standards and Safeguarding within the Catholic Archdiocese of Canberra/Goulburn, publicly expressed his support for the reportable conduct scheme in NSW, and for the transparency afforded by the Ombudsman’s independent oversight in this process.¹⁰

Notwithstanding the value of the reportable conduct scheme, we believe that it is important to also emphasise – as we have in earlier submissions – that it is only one component of a comprehensive child safe framework. In this regard, we note the Consultation Paper’s observation that the Commission has heard evidence about the combined benefits in NSW of the reportable conduct scheme, the Working with Children Check and the information sharing provisions. We have previously outlined the important way in which these critical components intersect, and have expressed our support for a nationally consistent and robust system in this regard.¹¹

¹⁰ ‘Church acts on abuse fall-out’, Goulburn Post, 20 April 2016.

¹¹ See for example our September 2013 submission on Issues Paper 1.

We believe that the following features have been important to the operation of the NSW reportable conduct scheme:

- Our direct electronic access to critical risk information held by the NSW Police Force (COPS database); Family and Community Services (KiDS database) and the Office of the Children's Guardian (Carers Register).
- Powers to directly investigate the conduct of agencies within our jurisdiction and to obtain from agencies/individuals information relevant to the exercise of our functions.
- The information exchange provisions in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*, which allow the Ombudsman and other prescribed bodies to share critical information relevant to the 'safety, welfare or wellbeing' of children.
- Our 'Notification of Concern' function, contained in Schedule 1, Clause 2A of the *Child Protection (Working with Children) Act 2012* (WWCC Act), which allows us to notify the Children's Guardian of information, 'on the assessment of which the Children's Guardian may be satisfied that the person poses a risk to the safety of children'. A 'notification of concern' is an assessment requirement trigger under the same Act – that is, the Guardian must conduct an assessment in response to the information.
- Section 25GA of the *Ombudsman Act 1974* – a new provision providing for the disclosure of information about an investigation concerning a reportable allegation and the outcome to children, parents and caregivers.
- Our dual functions in relation to oversighting employment-related child protection and the delivery of community services (including child protection service delivery).

2. Improving the capacity of smaller institutions to respond to complaints about child sexual abuse access

The Commission has sought submissions on ways to improve institutions' access to advice and support when responding to complaints of sexual abuse, bearing in mind that institutions vary, 'in the work they do, their size, and the extent of legislative and other oversight of their activities'.¹² In particular, the Consultation Paper notes the discrepancy that exists whereby some larger institutions have specialist internal units – enabling them to provide access to centralised complaint-handling expertise and support – while many smaller agencies have no access to such a resource, which may be compounded by limited exposure to allegations of child sexual abuse.

- ***Addressing limitations on capacity and expertise***

Consistent with the observations of the Consultation Paper, through exercising our employment-related child protection and community services functions we have observed significant variation in the complaint-handling and investigative capacity of the thousands of agencies currently within our jurisdiction.

We employ a range of strategies to raise awareness and knowledge of the reportable conduct scheme among designated agencies and to support employers to meet their obligations under the scheme. These strategies include:

- Publishing on our website a range of factsheets and practice updates for employers.
- Providing direct telephone advice to employers. In our experience, the telephone advice we provide can mitigate some of the significant risks which can arise in the very early stages of an agency's handling of a serious reportable allegation, particularly criminal reportable allegations.

¹² 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*, March 2016. p1.

- Delivering employment-related child protection training to staff of agencies falling within the reportable conduct scheme, including workshops on responding to child protection allegations against employees and handling serious allegations.
- Providing targeted information sessions to build the capacity of specific sectors/agencies, particularly those which are ‘new’ to our jurisdiction.
- Regularly meeting with agencies to discuss emerging systemic or practice issues, and convening ‘case conferences’ to discuss individual investigations.
- Hosting stakeholder forums and giving presentations at conferences and seminars.
- Providing detailed feedback to the agencies we audit under section 25B of the Ombudsman Act.

Over the last few years, we have focussed our capacity building initiatives on strengthening the early childhood, Aboriginal out-of-home care (OOHC), religious, sporting/recreation and community sectors. This work has included regular meetings with agencies/ sectors to discuss emerging issues, hosting information forums, and supporting agencies, in a very practical way, through direct engagement with them on both individual cases and related systems issues.

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). Furthermore, as we discussed in our February 2016 Special Report to Parliament, 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 (even though they recognise the value of the support which we can provide).

In this regard, some of the larger bodies have agreed to work together to explore options for pooling their resources. In relation to the sporting and recreation/community sector, we have also suggested there would be merit in Government exploring with relevant stakeholders whether to establish a single entity, similar to a peak body, to conduct certain complex investigations; provide advice on risk management; develop policies; and deliver training (as opposed to funding a large number of individual and disparate organisations for this purpose).¹³ We have also suggested that the overall costs associated with establishing such an entity would be relatively modest, particularly 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.

- ***Managing conflicts of interest***

In addition to limitations on capacity and expertise, it is not uncommon for institutions to have to deal with conflicts of interest in connection with their handling of allegations of reportable conduct (particularly in relation to small institutions, such as many child care centres, where the head of agency, or a family member or friend of the head of agency, may be the subject of the allegation). As the Commission is aware, this was the case in the matter examined in Case Study 38.

We suggest that this is another strong argument in favour of considering the approach suggested above; that is, the establishment a single entity able, among other things, to conduct certain investigations on behalf of smaller agencies. In this regard, we note that at our Reportable Conduct Forum in February 2016, a view was expressed by representatives of the Approved Children’s Services sector that ‘*In terms of enhancing the knowledge and skills of the sector regarding child*

¹³ NSW Ombudsman, *Strengthening the Oversight of Workplace Child Abuse Allegations*, February 2016, p18.

*protection obligations, including reportable conduct responsibilities...the establishment of an industry led resource to build sector capacity in this area would provide a strong return.*¹⁴

On this point, I note that while the NSW Ombudsman does have direct investigation powers, we do not have the resources to conduct an investigation in every case where a conflict of interests arises, or where a problem with the capacity and/or expertise of an agency is identified.

I trust that the information provided is of assistance to the Commission. If it would be of assistance, we are more than happy to further discuss with the Commission any of the issues we have highlighted or any other aspect of our work. In this regard, please do not hesitate to contact me on (02) 9286 0989 or Ms Julianna Demetrius, Assistant Ombudsman (Strategic Projects) on (02) 9286 0920. Ms Demetrius will be on leave from 15 April – 13 May inclusive.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Kinmond', with a large, sweeping flourish at the end.

Steve Kinmond
Deputy Ombudsman
Community and Disability Services Commissioner

¹⁴ http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0018/31761/Early-Childhood-Forum-slides-1April.pdf