

20 September 2012
CSCD/12/553

Ms Georgie Crozier, MP
Chair
Family and Community Development Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Ms Crozier

Thank you for the opportunity to contribute to the inquiry by the Family and Community Development Committee into the processes by which religious and other non-government organisations respond to the criminal abuse of children by personnel within their organisations.

The *Child Wellbeing and Safety Act 2005* (CWS Act) provides the legislative mandate for the Office of the Child Safety Commissioner (OCSC). The OCSC seeks to promote the safety and wellbeing of all children in Victoria, with a particular focus on very vulnerable children, including those known to Child Protection and out-of-home care services. The CWS Act provides that a key objective is the promotion of continuous improvement and innovation in policies and practices relating to child safety. The OCSC is also mandated to review the administration of the *Working with Children Act 2005* by the Secretary of the Department of Justice and, in consultation with that department, to educate and inform the community about the WWC Act.

Consistent with this mandate, the submission focuses on those questions relating to the need for reform to laws, policies and protocols to reduce the risk of child abuse occurring, and to more effectively respond to any allegations of abuse.

I note with regret that the terms of reference do not explicitly extend to government organisations. I trust that any reforms identified will apply across all sectors, so that children accessing services within government run organisations are no less safe than those accessing services within religious or non-government organisations.

Consistent with the guidance provided by the Committee in the *Submission Guide*, throughout this submission the terms 'religious personnel' and 'ministers of religion' have been used, and are intended to have the broad and inclusive definitions noted in the *Submission Guide*.

In accordance with the CWS Act, all references to children are to those aged under 18 years.

In my submission, I intend to focus on legislative and policy reforms in the areas of prevention, legislation, monitoring and victim support:

Prevention

1. Establish and fund a body to support and advise organisations on the implementation of strategies to reduce the risk of abuse occurring, and how to respond to any allegations or concerns that arise.
2. Provide funding to ensure that all children in Victoria are provided with age appropriate training in protective behaviours and to ensure that parents, carers and teachers are better equipped to recognise and respond to child abuse.

Legislation

3. Enact legislation to require specified types of organisations to have effective policies and procedures in place to protect the safety and wellbeing of children.
4. Amend the Working with Children (WWC) Act 2005 to:
 - remove the exemption for parents;
 - expand the scope of the Act as it applies to those working within religious organisations;
 - clarify the meaning of the term 'supervision'; and
 - expand the functions and strengthen the capacity of the Secretary of the Department of Justice to call evidence at hearings before the Victorian Civil and Administrative Tribunal (VCAT); to monitor and audit compliance and, in conjunction with Victoria Police, to take action in relation to any non-compliance.
5. Amend the *Crimes Act 1958* to create a new statutory duty to report suspected acts of physical and sexual abuse of children by those working within organisations (including religious, government and non-government organisations).

Monitoring

6. Establish a system of independent community visitors to monitor residential care services for children and other 'institutional' type services for vulnerable children.
7. Acknowledgement of the role of the Independent Visitor Program (IVP) in providing monitoring of the care of young people in custody in Youth Justice Centres through giving the young people an opportunity to raise any issues of concern.

Victim Support

8. Enhance the support available to victims of abuse through:
 - acknowledgement of the added trauma that may accompany abuse of children by a minister or other religious personnel
 - "fast tracking" of access to support services
 - funding of the support and advocacy organization, broken Rites, and
 - extra support for participation at Victims of Crime Assistance Tribunal (VOCAT).

I would be pleased to take this opportunity to expand further on the above:

Prevention

Supporting organisations to become more child-safe

The Committee has sought information about proactive approaches to reducing the risk of child abuse occurring within organisations. The principles of creating a child-safe organisation are well described in a range of resources. For example, the OCSC has produced and widely distributed (both in hard copy and online) *A Guide for Creating a Child-safe Organisation*. The central premise of the Guide is that:

All children have the right to feel safe and to be safe all of the time. A child-safe organisation acknowledges that safety does not just happen. A child-safe organisation takes action to protect children from physical, sexual, emotional, psychological and cultural abuse and from neglect. In a child-safe organisation, this commitment to protecting children is embedded in the organisation's culture and responsibility for taking action is understood and accepted at all levels of the organisation.

The Guide encourages organisations to consider how well they:

- welcome children and their families/carers
- recognise that children are vulnerable
- recognise and respond to children with special needs, including a disability
- actively encourage the participation of Aboriginal children
- recognise and respond to the particular needs of children from diverse cultural, linguistic and religious backgrounds
- encourage children to participate in making decisions
- recruit and manage staff and volunteers
- ensure the commitment to child safety is clear and shared by all; and
- educate staff and volunteers about child safety.

The OCSC has also produced and distributed several resources for parents and carers to better equip them to assess how "child-safe" an activity, service or organisation is for their children. In particular we have produced:

- a booklet entitled *Information for parents - Things to look at when selecting child-safe activities or services for your child*; and
- a DVD and fact sheets entitled *Wise choices: Safe children* (which includes information in English, Arabic, Cantonese, Dinka, Farsi, Mandarin, Somali and Vietnamese).

The OCSC is aware that there are also a range of resources produced by other organisations which are also designed to provide guidance to organisations, as well as to parents. Of particular note, are the resources produced by ChildWise (www.childwise.net) and the Play by the Rules website (www.playbytherules.net.au). Although each resource may have a different emphasis or style, the best ones place the wellbeing of, and respect for, children at the centre of all the organisation does, and this should be kept in mind when assessing the quality of any particular resource.

As researchers have noted:

"Developing a child-centred, child-safe culture of respect within an organisation that supports early disclosure, accountability by all adults, and challenging unacceptable behaviour is now identified as the future direction in managing organisational risk."¹

A key challenge going forward is to ensure that these principles are put into practice across all organisations. For this to happen, organisations (particularly those which are small and run by volunteers) need more than access to information, they also require:

- Assistance to formulate policies that will work well within their organisation;
- High quality training and information so that they can educate staff, volunteers and committee members about how to create a child-safe organisation;
- Training for all staff on how to identify and respond to behaviours which are of concern; and
- In particular, ready access to advice on how to respond to particular issues when they arise.

In our experience, most religious and non-government organisations and those who lead and work in them, want to do the right thing by children. Nonetheless, there will always be obstacles to keeping children safe within organisations. When allegations of abuse are raised, there may be incredulity and incomprehension that a 'trusted' friend and colleague could abuse a child and a desire to avoid public scandal and

¹ 'Child maltreatment in organisations: Risk factors and strategies for prevention'
Mel Irenyi, Leah Bromfield, Lorraine Beyer and Daryl Higgins, viewed 5 September 2012,
<<http://www.aifs.gov.au/nch/pubs/issues/issues25/issues25.html#conclusion>>.

shame for those involved. Organisations need to put in place, and be supported to put in place, strategies that eliminate the risks of this occurring. In such circumstances, organisations need to know how to respond in a transparent manner when suspicions are raised, and how to respond when police believe that there is insufficient evidence to pursue criminal charges, but concerns remain. Organisations, particularly those in the not for profit sector, need assistance to do this including easy access to advice and support that enables them to know quickly and easily what they need to do and gives them the support to do it.

The most effective and efficient way to achieve universal child-safe organizations would be funding of:

- Services to provide support to organisations throughout Victoria for the development and implementation of policies;
- Training of staff and leaders; and
- Advice on responding to concerns and complaints relating to possible child abuse. Government funding for these activities would ensure that information and resources are available to all organisations, even smaller, volunteer based organisations. It would be a way of acknowledging the valuable contributions organisations make to the wellbeing of children, and indeed the whole community. It could also assist organisations to develop a better understanding of who within their organisation should have a WWC check and better target compliance with the requirements of the WWC Act.

Please see the first section under Legislation for legislative measures required to mandate the implementation of child-safe practices in relevant organizations.

Protective Behaviours

Organisations are responsible for ensuring that the children who are entrusted to their care are kept safe. The primary focus of any recommendations must be directed towards the conduct of organisations, whilst acknowledging that a full guarantee is not possible. As a community we also need to ensure that all children receive regular and developmentally appropriate protective behaviours training. This Inquiry provides an important opportunity to review the type of protective behaviours training currently available in Victoria, as well as the extent to which all children and young people are able to access such training. Consideration could then be given to making recommendations about the role of government agencies, in particular the Department of Education and Early Childhood Development (DEECD) in ensuring such training is provided to all children, including all three school sectors. Such training must go beyond 'stranger danger' as we know that when abuse does occur, the perpetrator is most likely to be a person known to the child, rather than a stranger.

The protective behaviours strategy must also be complemented by a community education strategy informing parents and carers about how to identify and respond to a child who indicates they are in need of support and protection.

In a recent decision, the State Coroner, Judge Jennifer Coate, made three recommendations after considering the case where a young woman killed and dismembered her stepfather following an extended period of sexual abuse. The judge recommended that the DEECD review training provided to teachers and ensure they were aware of the identified barriers to the reporting of child abuse. Judge Coate also called for a wide ranging education and information campaign for parents and caregivers of all school-aged children on the prevention of child sexual abuse.

Legislation

New regulatory structures to ensure policies are developed and monitored

In addition to providing assistance to organisations to encourage and support them to become more child-safe, legislation should be developed which mandates the implementation of child-safe policies in relevant organisations. Such a scheme should also include a mechanism to monitor and respond to complaints. In considering the structure and mandate of any such new legislative scheme, consideration could be given to adapting features from other structures currently in place in other jurisdictions. For example:

- In Queensland, organisations which are included within the scope of the children's check system must implement child and youth risk management strategies covering eight minimum requirements.
- In New South Wales, the Ombudsman has for many years had a specific legislated role in relation to monitoring and investigating employment-related child protection practices. The role of the New South Wales Ombudsman, which extends to both government and some non-government agencies, includes monitoring the way in which these organisations respond to reportable allegations; scrutinising the systems they have in place to prevent abuse and respond to any allegations; and promoting best practice.
- In Victoria, the Disability Services Commissioner has legislated responsibilities in relation to the monitoring and resolution of many types of complaints relating to disability services and has developed a suite of tools to assist organisations to develop their own policies and procedures.

Working with Children Checks

The Working with Children (WWC) Check is an essential part of creating a child-safe organisation and from our observations appears to be well accepted and supported within the Victorian community. As the WWC Check has now been in operation for six years, it is an appropriate time to consider how the WWC Check might be refined to best meet its objective of keeping children safe.

Exemption for parents

Section 27 of the WWC Act provides that a "parent engaging in work as a volunteer in relation to an activity in which his or her child is participating or ordinarily participates is exempt from a working with children check in respect of that activity." If the primary objective of the legislation is to keep unsuitable people from working with children, then this exemption seems inconsistent with achieving this objective. The fact that a person is a parent does not guarantee that they are suitable to work with children.

Some of the decisions published by VCAT on the WWC Check illustrate the anomaly of the exemption for parents. In a number of cases, VCAT has upheld the decision of the Secretary of the Department of Justice to refuse to give an applicant a WWC Card. In some cases, the applicant who has been refused a Card is a parent and indicated that they wished to volunteer in activities in which their children were involved. In such cases, it appears the organisations for which they wished to volunteer may have been requiring more than the minimum required under the WWC Act 2005, but of course not all organisations will do this. It is arguably therefore open to people who have been or would be found unsuitable to have a WWC Card to still have regular, direct and unsupervised contact with children within religious or other non-government organisations. The person could be a volunteer in a leadership position within an organisation, provided their own child as regular participant. A

recent case in Western Australia has highlighted the risks to children arising from the exemption for parents.²

In our experience, many organisations do ask that even parents who might otherwise fall within the parental exemption undertake a WWC Check. Similarly, we have found many parents assume that organisations would screen all volunteers who regularly work with children, and would not be aware that parent volunteers may not have been required to have a WWC Check, giving them a false sense of security. Furthermore, research and clinical practice demonstrates that those who present a risk of harm to children will seek ready accessibility to children, including peers of their own children.

Removing the exemption for parents would ensure that the law matched the expectations of the community, better protected children and ensured all organisations adopted a consistent practice in relation to parents who have regular, direct and unsupervised contact with children. If the exemption were to be removed, it would also be important to ensure that organisations and the broader community understood that only those who had regular, direct and unsupervised contact with children would be required to have a check. Thus for example, a parent who was the head coach of a team would be required to have a check, not every parent who occasionally helped out at practice.

Mechanisms for auditing and supporting compliance

The WWC Act was introduced in Victoria in 2006 and as at 30 June 2012, a total of 835,575 WWC cards have been issued across 20 categories of child-related employment³. Interim negative notices have been issued in 1,440 cases and 1,105 negative notices have been issued.⁴

Now that the card is well established, it is an appropriate time for the government to consider incorporating into legislation, the requirement for the Department of Justice to monitor and investigate compliance with the WWC Act. Specific compliance auditing or monitoring provisions are included in the legislation pertaining to similar checking systems in other Australian jurisdictions and would constitute further strengthening of the Victorian system.

Better evidence to enhance decision-making

The integrity and fairness of the WWC system depends in part on the Secretary of the Department of Justice and VCAT having available to them high quality evidence to assess the potential risk an applicant may pose to children. Consistent with the legislative functions of some other Australian checking system operators, it would be appropriate to consider amending the WWC Act to enable the Secretary of the Department of Justice to request an applicant to undergo examination by a registered health professional nominated by the Secretary. This would enable the Department of Justice to seek the professional assessment of an applicant by a health professional that the Department considers to be of high repute. This may also enhance the quality of the evidence available to VCAT to enable better assessment as to whether the applicant poses a risk of harm to children.

² WA Today, *Should parents have Working With Children cards? Of course they should*, Anne-Louise Brown published June 22, 2012

³ Department of Justice 'Statistics', viewed 13 September 2012
<<http://www.justice.vic.gov.au/workingwithchildren/home/about+the+check/statistics/>>.

⁴ Department of Justice 'Statistics', viewed 13 September 2012
<<http://www.justice.vic.gov.au/workingwithchildren/home/about+the+check/statistics/>>.

Ministers of religion

The WWC Act currently requires that all those engaged in child related work within 'religious organisations' who have regular, direct and unsupervised contact with children have a WWC Check (unless a particular exemption applies). The Act states that 'child related work' includes 'a minister of religion or as part of the duties of a religious vocation'.⁵ The inclusion of religious organisations within the WWC Act is particularly important because religious leaders are in a special position of trust within the community; they have unique and privileged access to the lives of those within their religious tradition.

Children are often encouraged to look to ministers of religion and other religious personnel for instruction and advice, to rely on them as a source of moral authority and see them as a safe person to trust in difficult times. This high level of trust should be matched with a high level of care by religious organisations to keep children safe.

It is profoundly disturbing that there are so many examples of cases in which this trust has been breached. Looking to the future, it is appropriate to consider whether the language of the WWC Act should be strengthened to ensure it adequately covers the diverse ways in which religious organisations are structured and operate.

While many religious organisations appear to have taken a broad view of their obligations under the WWC Act, the OCSC is aware that there has been some uncertainty about the application of the WWC Act to some religious personnel. In particular, the question of who 'supervises' contact between a minister of religion and a child can be a complex one⁶, as can the question of whether a minister's contact with children requires them to have a WWC Check. To avoid doubt, it would be useful to clearly indicate that where children are present in a religious organisation, the religious personnel should have a WWC Check, even if it is customary for children to attend organised events in the company of their parents. Parents may well have a role to keep an eye on their own children, but should not be seen as 'supervising' the way in which the minister or other religious personnel work with children.

Strengthening the criminal law

For children to be as safe from abuse as possible within an organisation, the organisation must ensure its commitment to protecting children is strongly embedded in its culture and within all levels of the organisation. No doubt the Committee will receive much evidence about the past failures of organisations to develop such cultures and the failure of leaders to respond appropriately to allegations of abuse. Strengthening criminal law provisions relating to the failure to report abuse would help drive cultural change and highlight that such conduct will not be tolerated by the Victorian community.

The OCSC supports, in part, recommendation 47 of the Final Report of the Protecting Victoria's Vulnerable Children Inquiry which provides that:

"The Crimes Act 1958 (Vic) should be amended to create a separate reporting duty where there is a reasonable suspicion a child or young person who is under 18 is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation. The duty should extend to:

- A minister of religion; and

⁵ Section 9 of WWC Act

⁶ Zwartz, Barney, *The price of battling paedophilia*, The Age, Monday 17 September 2012, p.22

- A person who holds an office within, is employed by, is a member of, or a volunteer of a religious or spiritual organisation that provides services to, or has regular contact with, children and young people.”

The OCSC does not agree that this reporting duty should only apply to abuse within religious or spiritual organisations, nor does the OCSC agree that there should be an exemption for information received during confession.

In addition, the OCSC notes that all adults have a moral and ethical obligation to report suspicions of child abuse to either the police or Child Protection authorities. We understand that in some cases there may be confusion about the scope of mandatory reporting provisions. However, particularly for those in positions of leadership and trust, the question should not be ‘am I legally obliged to report’ but rather, ‘is this something which should be reported in the interests of the safety and wellbeing of children?’

Monitoring

Children in out of home care

The Department of Human Services has particular responsibility for children who have experienced abuse and neglect within their families, having sole guardianship responsibility for some children. The department, along with a number of community service organisations, provides a range of out-of-home care services for children, including residential care services. Thankfully out-of-home care has improved greatly from the days when it was provided in large institutions, where the potential for systemic abuse to flourish has been demonstrated all too often. However, while services have improved, the children who live within the services are still very vulnerable. ‘Institutions’ may no longer exist, but vulnerable children are still being raised in bureaucratic service systems in which they are often disconnected from family and community.

The vulnerability of children who live in residential care should be matched by robust monitoring systems, including independent community visitors. The establishment of a community visitors program would assist to bridge the gap between these children and their community. Such a scheme would raise the visibility of these children and provide an opportunity for them to voice any concerns or complaints to someone independent of the service on which they depend for all their care needs and may also be their legal guardian.

The primary role for the community visitors should be to meet directly with the children in care, listen to their concerns and report back on both what is working well within the care system and what needs to be improved. Community visitors should be independent of service provision and annual reports of their activities should be included in either the Children’s Commissioner’s annual report or in a separate report.

Other children in care

In addition to the establishment of a residential care community visitor program, consideration could be given to the establishment of a community visitor program for other children who are reliant on institutions for their care, for example, children who reside in adult prisons and children held in immigration detention.

Children involved with Youth Justice

As the Youth Parole Board’s 2012 Annual Report starkly highlighted, children detained in the Victorian Youth Justice system present as the most heavily disadvantaged young people in our community. The Board paints a realistic picture stating that ‘the stories of their early lives are sad and disturbing. There is neglect,

abandonment and abuse, often in circumstances which would shock many in our community.⁷

We know that many young offenders have experienced abuse and/or neglect in their early years and that this has a devastating effect on their development. Results of a snapshot survey of 168 males and eight females in custody in October 2011 carried out by the Department of Human Services shows that 65 per cent of these children were victims of abuse, trauma or neglect prior to incarceration, and 56 per cent had involvement with Child Protection.

This group requires our utmost attention and an approach that is underpinned by our understanding of their vulnerability.

At the request of the Minister for Community Services, the Hon. Mary Wooldridge MP, the OCSC established an Independent Visitor Program (IVP) in Youth Justice Centres. Volunteers from a diverse range of professional backgrounds have been recruited to undertake monthly visits to the Parkville Youth Justice Centre Precinct.

The Visitors are able to enter and inspect the centre and talk to any young person in custody, observe general routines and procedures of the centre and make inquiries of staff about programs being provided to young people in custody. Young people at the centre talk to visitors about a range of issues relating to their time in custody. The Independent Visitors assist young people with the resolution of these issues with staff and management of the centre.

The establishment of the Youth Justice Centres Visitors Program adds a new and richer dimension to the advice provided by the Child Safety Commissioner. The trained volunteers, through their connections with vulnerable young people in the care of the state, provide a new avenue for the voices of these young people to be heard and an invaluable community perspective on how well Victoria is doing in meeting the needs of these young people.

Victim Support

Those children, who have been abused by ministers of religion or other religious personnel, or other institutional staff, can have extra layers of trauma associated with their relationship with the institution. Sexual or criminal abuse of children by people who are in a position of care, supervision or authority has previously been argued to be of particular concern given the potential to exploit or take advantage of the influence that grows out of that relationship, reflected in more severe legal sanctions being recommended.⁸ The complex nature of this abuse may be further heightened by the abuse being perpetrated by a person that the child has been encouraged to view as a spiritual adviser. This may give the betrayal of trust an extra dimension whereby the victim cannot seek assistance from the institution that is designed to offer pastoral care and support in times of difficulty. Victims can be effectively cut adrift from their families who hold belief in the institution, the institution itself as a source of support, and other agencies given the hesitancy to trust.

For these reasons, it would be appropriate to arrange a system of "fast tracking" such victims of institutional abuse seeking support from agencies such as CASA's (Centres Against Sexual Assault). As has occurred in relation to other specific groups at different times, a process which triages such clients more quickly to ensure they get access to counselling and support services more rapidly can be arranged. It may be that such an extra service demand only occurs for a period of a year or so

⁷ Youth Parole Board and Youth Residential Board Victoria, Annual Report 2011–12, Victorian Government Department of Human Services, Melbourne

⁸ Victorian Law Reform Commission, Sexual Offences Law and Procedure: Discussion Paper, September 2001, p.105

following this Inquiry, and would reflect the measures already taken to address the service demand generated to date by the Inquiry.

Furthermore, consideration should perhaps be given to funding other support services for victims including Broken Rites, which is not connected with any church or religious organization, does not charge for services and is not for profit community service organization run by volunteers. Broken Rites has offered an accessible service for all victims of sexual abuse by religious personnel from any denomination and has advocated strongly for victims in pursuing matters through the criminal justice system and exposing the nature of systemic abuse within religious institutions.

Consideration could also be given to streamlining the processes at VOCAT to support victims who it is acknowledged have been subjected to institutional abuse associated with their personal abuse by an individual. These crimes have often been very difficult to investigate and prosecute leading to further trauma for the victim. It may be appropriate that enhanced compensation is awarded to the victim and the extra costs of litigation and support recouped from the institution which did not appropriately prevent or respond to the abuse.

Conclusion

In conclusion, I would like to acknowledge the pain and suffering experienced by many children within our community arising from abuse by those within institutional settings. This is a gross breach of trust that must not be tolerated by our community.

A multifaceted response is required to ensure this abuse stops, both through prevention and early detection, and that its devastating impact is lessened over time with the provision of support for those who have been harmed. Their pain is ongoing, as is their need for support over the long term.

I understand that some people will choose to share their own experiences with the committee. What powerful messages they will be. The greatest of care must be taken however, to ensure they are able to do so in a way that is safe and supportive. We must all learn from their experiences to create a community which is better able to protect the safety and wellbeing of children. However, these individuals have already experienced betrayal, and we must not, however well intentioned, allow this process to further exacerbate their traumatic experiences.

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

If you would like to discuss any of these issues in more detail please contact myself on 8601 5886 or at Bernie.Geary@ocsc.vic.gov.au.

Yours sincerely



Bernie Geary OAM
Child Safety Commissioner