

20 September, 2012

Ms Georgie Crozier MP
Chairperson
Family and Community Development Committee
Victorian Parliament

Email: fcdc@parliament.vic.gov.au

Dear Ms Crozier,

RE: Inquiry into the Handling of Child Abuse by Religious and Other Organisations

The Australian Childhood Foundation is a national not for profit organisation which delivers specialist therapeutic programs for children and young people who have been affected by trauma arising from abuse and family violence. It runs these services in Victoria, South Australia, Western Australia, Northern Territory, ACT and Tasmania. The Foundation is also a Registered Training Organisation and runs professional education activities about trauma and child protection reaching 6000 health, welfare and education professionals each year nationally. Specifically, in Victoria, the Foundation has run a Child Trauma Service in the Eastern Metropolitan Region since 1991 for children and young people who have experienced abuse and family violence. It piloted Victoria's first therapeutic foster care program in 1991 in partnership with Anglicare Victoria and now is the therapeutic partner in a number of therapeutic foster care programs across Metropolitan Melbourne and Gippsland.

The Foundation has a long history of advocating for the development of child serving systems which place the safety of children at the centre of individual, organisational and community decision making. Such systems achieve their mission through an honest acceptance of the risks of abuse and exploitation that adults can pose to children.

It is the Foundation's view that a new legislative and policy regime is necessary to enact a safeguarding children agenda in Victoria. This much needed reform should aim to introduce greater transparency and independent scrutiny of all organisations which provide a service or program to children.

I have listed in turn a summary of the critical issues that require attention and proposed a series of recommendations for consideration by the Committee.

In addition to the submission, I welcome the opportunity to provide additional information in person if required by the Committee in its deliberations. I can be contacted via email at itucci@childhood.org.au.

Yours sincerely,



Dr Joe Tucci
CEO

Australian Childhood Foundation
Happy house
Where no bad things happen.
Happy People
COUNSELLING IS THE BEST MEDICINE
Counseling is also good because it brings the family back together.
LIKE?



Australian Childhood Foundation Submission to the Inquiry into the Handling of Child Abuse by Religious and Other Organisations

- 1. The abuse and exploitation of children by employees and volunteers of organisations who provide a service to children is inadequately researched, poorly understood and lacks impetus as a focus of community or government attention.**

In a National Child Protection Clearinghouse Issues Paper devoted exclusively to the topic of child abuse within organisations, Irenyi et al (2007) highlighted the paucity of research into the historic and contemporary institutionalised harm caused to children by employees and volunteers. In contrast, there has been a far greater concentration of research over time into intra-familial abuse.

It is the Foundation's view that the combination of these two trends has led to the assumption that the abuse and exploitation of children by employees and volunteers in organisations is less serious in its impact and less pervasive in its reach than the abuse of children perpetrated by family members.

The Wood Royal Commission in 1997 made a similar observation:

It may be that some confusion about the incidence of child sexual abuse has also arisen out of the fact that physical abuse, emotional abuse and neglect are distinctly familial. According to DCS statistics, in 1994/95 family members accounted for 93% of physical abuse, 95% of emotional abuse and 94% of neglect cases. Any analysis which does not separate sexual abuse from other forms of abuse or relies on anecdotal reports about the incidence of 'abuse' is likely to mistakenly conclude that most sexual abuse is familial (p. 618).

As recently as 2009, the Australian Senate Community Affairs References Committee reported that the inadequate responses to the issue of organisational abuse by governments, churches and care providers reflected a "...complete lack of understanding of, or acceptance of responsibility for the level of neglect, abuse and assault that occurred in their institutions...(p5)".

Further, it went on to argue that there had been little significant change in this area and that these groups had demonstrated "...at best only a rudimentary awareness of these issues and their implications...(p5)".

There is currently no way of knowing the extent of the problem of child abuse and exploitation perpetrated by employees and volunteers in organisations who provide a service or activity to children. As Erooga, Allnock and Telford (2012) have pointed out, it is one of the most

"...striking features of an issue about which there has been so much publicity is that there are no definitive figures relating to incidence (p.12)...".

Other than New South Wales, no other jurisdiction, including Victoria, systematically collects data on the incidence of child abuse and exploitation by staff and volunteers. This is despite the recommendation in the *Forgotten Australians* report (Australian Senate Community Affairs References Committee, 2004) that organisations with this role should publish data annually on all abuse complaints received. In its review in 2009, the Australian Senate Community Affairs References Committee indicated that there had been almost no progress on this issue.

The National Framework for Protecting Australia's Children has recognised the need to resource and support organisations to ensure that they are more protective of children and young people in their care. However, there is little guidance as to how this can be achieved.

As has been argued previously by Goddard and Tucci (2008), a partial understanding of the dimensions of a problem in the field of child protection has been the basis to a fragmented response that has failed children. As Goddard (1996) pointed out

"...Every development in knowledge of the problem of child abuse has been accompanied by disagreements about definitions to be used, the incidence of the problem, theoretical approaches to causation, the perpetrators of abuse, the effects on victims, efficient approaches to practice, the adequacy of child protection policies, and the appropriateness of methodologies chosen to ascertain the 'truth' about all of the above (p. 9)..."

In Victoria, it is evident that there has been lack of cohesion and priority given to the abuse and exploitation of children by volunteers and employees of organisations with a role in providing a service to children.

2. There is a clear need to introduce a strengthened and cohesive legal and policy paradigm in Victoria that effectively protects children from the abuse and exploitation by employees and volunteers in roles with organisations that are aimed at supporting and delivering services to children – *Tinkering with the current system will not effect change.*

The legal and policy paradigm currently in place in Victoria can best be described as a loose collection of uncoordinated initiatives which have been implemented progressively in reaction to public concern to specific cases as they have been reported. It involves the following:

- mandatory *Working with Children Checks* for volunteers and employees who have defined roles in activities with children which imposes requirements on the employee or volunteer and the organisation that contracts the employee or volunteer;
- the oversight of the Working with Children Check system by the Victorian Commissioner for Children;
- registration of all teachers through the Victorian Institute for Teaching which involves mandatory criminal records screening; and,
- the inclusion of a number of sexual offences and assault offences against children and young people in the Victorian Crimes Act (1958);
- the inclusion of the offence of procuring sexual penetration of a child under 16 years of age in the Victorian Crimes Act (1958);
- the inclusion of the offence of procuring sexual penetration or indecent assault of a child under 16 years by a person who exercises care, supervision or authority over a child in the Victorian Crimes Act (1958);
- the inclusion of the production and possession of child pornography as crimes;
- the inclusion of the offence of "grooming" of a child using in the internet in Commonwealth Criminal Code Act 1995.

However, as the need for this inquiry has acknowledged, the current paradigm has significant limitations. In summary, a review undertaken by the Foundation suggests that there is a lack of policy and legislative cohesion that articulates a community commitment to the protection of children from abuse and exploitation. There is also a history of poor Victorian Government leadership. It is not mandatory to report the abuse and exploitation of children by employees and volunteers. The protection of “whistleblowers” who report abuse by employees or volunteers within organisations is not available under current Victorian legislation. Employment proceedings against employees which involve grooming or inappropriate behaviour towards children are not included in Working with Children Checks. There is very little independent and sustained scrutiny of organisations within which children have been abused or exploited by employees and/or volunteers. There is no accreditation scheme for organisations in relation to their child protection policies and procedures. Victorian legislation in relation to crimes against children has fallen behind those introduced by other states. There has been virtually no commitment to funding community education campaigns that are sustained over time about child protection.

Each of these failings is summarised in turn below:

- *Inadequate systems of protecting children from abuse and exploitation by staff and volunteers are as bad as no systems at all.*

The little Australian research that has been conducted into the abuse of children by employees and volunteers and organisations has shown that half-hearted approaches which are not integrated within a cohesive policy and legislative framework are not effective.

For example, inadequately prepared organisations can be vulnerable to the subversion by adults intent on harming children. Between 1988 – 1996, the Victorian Child Exploitation Squad found that 43% of sex offenders gained access to child victims through children’s organisations (Petratis and O’Connor, 1999).

A Queensland Crime Commission investigation in 2000 highlighted numerous deficiencies in the approaches of organisations to the protection of children and young people from abuse. Less than one third of sporting, scouting and youth organisations contacted undertook any screening of employees and volunteers. Half of the 66 non-government schools involved in the survey had no guidelines in place for dealing with allegations of abuse involving a school employee. Only three out of 51 community groups had formal policies for reporting allegations of child abuse involving employees or volunteers. More than half of these groups said they would not involve the police in an allegation of child sexual abuse (Project Axis, 2000).

Recently, the NSW Ombudsman (2010) reported that in a sample of 101 sexual offence matters against school students by school employees between 2001-2009, 92% involved grooming prior to the sexual offence. In 31%, the grooming behaviour had been reported prior to the conduct escalating to a sexual offence. Of these, 39% of reports were not acted upon at all. Some action took place in 42% of matters, however, only 19% were deemed to have been appropriate action. In more than half of the reported matters, the response included ineffective warning of the perpetrator.

At an organisational level, the Australian Senate Community Affairs Reference Committee (2004) found that there were major failings within Church and care agencies to develop effective and transparent procedures for responding to child abuse allegations by employees and volunteers. The report identified a number of problems with existing processes: inconsistency and failure to adhere to processes; a lack of objectivity; coercion and intimidation of claimants; and a lack of transparency and accountability (Australian Senate Community Affairs References Committee, 2004).

In the subsequent review of the progress of the recommendations it was noted that assessment of progress was difficult as the Committee did not receive submissions from any of the major religious organisations. Submissions from other sources indicated that while some changes were evident, in particular the development of protocols for responding to abuse allegations, there were still significant inconsistencies between and within Churches and agencies (Australian Senate Community Affairs References Committee, 2009).

- *Mandatory reporting of child abuse and exploitation by employees or volunteers is not in place in Victoria.*

All jurisdictions in Australia have implemented a legislative based regime for the mandatory reporting of child abuse. These vary from the Northern Territory, where every adult is mandated to report any reasonable belief of harm or exploitation of a child to other states such as Victoria and Western Australia where a limited number of professional disciplines are mandated to report very specific types of abuse. In Victoria, members of the clergy or religious orders are not included in the list of roles that are mandated to report abuse.

In addition, in Victoria, legislation stipulates that mandatory reporting only applies where the perpetrator of the abuse or neglect is the parent or carer, or the parent/carer is unwilling or unable to protect the child, instances of organisational abuse are specifically exempt from mandatory reporting obligations. In contrast, in New South Wales, Queensland and Northern Territory, abuse and/or exploitation perpetrated by employees of an organisation fall under the scope of mandatory reporting legislation.

The mandatory reporting regime in Victoria lacks clarity, is inconsistently configured and does not bring into its scope extra familial abuse, in particular that committed by employees and volunteers of organisations which provide a service or activity to children.

- *There is no protection for “whistleblowers” of abuse or exploitation by employees or volunteers in current Victorian law.*

In its *Forgotten Australians* report, the Australian Senate Community Affairs References Committee (2004) made recommendations that Governments should introduce “whistleblower” legislation for the religious and charitable sectors. It noted that such legislation had already been established for government and corporate organisations in Australia. The Committee considered that it was important to encourage the reporting of crimes against children as a way of making more transparent organisational cultures which had embedded practices of complicity.

- *The inclusion of employment proceedings in Working with Children Checks is not available in Victorian legislation.*

Under the *Commission for Children and Young People Act 1998*, employers in New South Wales who are required to administer the Working with Children Check must also report *relevant employment proceedings* to the Commission for Children and Young People. Relevant employment proceedings are completed inquiries where employees have been found to have engaged in conduct such as sexual assault of a child, sexual misconduct towards a child, physical assault, psychological harm of a child, neglect of a child, violence in the presence of a child and the possession, production or distribution of child pornography.

Also, *Part 3A* of the *NSW Ombudsman Act 1974* requires designated agencies, including some government departments, non-government schools, child care services and local government services to report specifically detailed allegations regarding employees to the Ombudsman. Certain types of behaviour not covered by mandatory reporting may be deemed “reportable conduct” and must also be reported to the NSW Ombudsman and the NSW Commission for Children and Young People.

Adverse findings in relevant employment proceedings and/or the substantiation of reportable conducts against employees are then considered by the Commissioner for Children and Young People in granting, suspending, or cancelling a Working with Children Check for an employee.

- *There is no independent oversight of organisations which provide a service or activity to children in relation to enacting effective systems of protecting children from abuse and exploitation by employees or volunteers.*

Unlike NSW, there is no institutional role designated with the authority to scrutinize the capacity of organisations to prevent the abuse and exploitation of children by volunteers and employees or respond effectively to children who are identified as having been abused or exploited by employees or volunteers.

Under Part 3A of the NSW Ombudsman Act 1974, the Ombudsman is given specific powers to monitor and review the systems of designated government and non-government agencies for preventing the abuse and exploitation of children by the employees of these agencies. The Ombudsman may require the CEO of any agency to provide information about these systems. The Ombudsman also has the power to monitor any investigation undertaken by the CEO of an agency of alleged abuse or exploitation of a child by an employee. If the Ombudsman forms the view that such an investigation is not being appropriately managed, the Ombudsman has the power to undertake its own investigation.

NSW has an advanced configuration of roles and responsibilities which include the statutory oversight by the NSW Ombudsman and Commission for Children and Young People. It also involves provisions for investigations of employee and volunteer misconduct against children which do not constitute crimes but nevertheless can be harmful and exploitative of children. This level of compliance in NSW is more robust and effective in its intent to protect children from abuse and exploitation within organisations for who there is a duty of care.

- *There is no accreditation scheme for organisations in relation to their child protection policies and procedures.*

New national OHS laws have placed the onus of responsibility on employers and employees to enact policies, procedures and systems to ensure the safety and well being of individuals within organisations. These laws require compliance to agreed standards of practice and behaviour.

Using compliance to safeguarding children standards by organisations is increasingly viewed as an effective approach to protecting children from harm by employees and volunteers. In Victoria, for example, the Department of Human Services has now implemented a set of broad compliance standards for organisations which receive funding from it. In relation to child protection, these standards ensure that organisations are compliant with the legislation in relation to ensuring the implementation of Working with Children Checks for employees and volunteers. However, given the generic nature of this particular standard, it makes no further in-roads into the approach adopted by organisations in developing and executing the policies, procedures and internal decision making systems to effectively decrease the risk of and protect children from abuse and exploitation by volunteers and employees.

More critically, non-funded organisations are not covered by any regime which supports them to develop and implement child safe policies and systems. This leaves a major gap in compliance in Victoria.

The Safeguarding Children Program, first developed in Victoria by the Australian Council for Children and Youth Organisations (ACCYO) and now managed by the Australian Childhood

Foundation is a voluntary accreditation scheme that facilitates organisations who undertake it to become compliant with seven key child protection standards. To date, more than 60 organisations are or are becoming accredited under the program. It includes all YMCA organisations in Australia. Ausaid have recently contracted the Foundation to support an implementation of safeguarding children methodology to its volunteer programs. It is a unique program that offers organisations clear resources and support, as well as independent scrutiny, of their systems to ensure that they have transparent processes for preventing if possible, identifying and responding to the abuse of children by employees and volunteers.

The Safeguarding Children program is the only Australian example of a capacity building initiative that is able to support funded and non funded organisations to improve their approach to child protection.

- *Victorian legislation in relation to crimes against children has fallen behind those introduced by other states.*

There are at least two key areas of criminal law in Victoria that make it less effective in addressing the abuse and exploitation of children by volunteers and employees in organisations who provide a service or activity to children.

Firstly, in relation to failing to report a crime to police, Section 326(l) of the Victorian Crimes Act 1958 has only one offence (relating to accepting a benefit), *"where a person has committed a serious indictable offence, any other person who, knowing or believing that the offence, or some other serious indictable offence, has been committed and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts any benefit for not disclosing that information shall be guilty of an indictable offence and liable to level 1 imprisonment"*.

It is only an offence if both aspects of the definition are met. Without accepting a benefit for not disclosing, a person cannot be convicted of failing to report a crime to the police.

In contrast Section 316 of the NSW Crimes Act 1900 has two types of offences related to failing to report a crime to the Police as follows:

(1) if a person knows or believes that a serious offence has been committed and fails without reasonable excuse to bring that information to the Police or other authority (2 years imprisonment)

(2) where a person solicits or accepts a benefit to conceal a serious offence (5 years imprisonment)

The NSW law makes it an offence to not report a serious crime without reasonable excuse, irrespective of whether or not a direct benefit is sought or accepted.

Secondly, whilst the Victorian law makes it an offence to procure a child for sexual activity, it does not include an offence related to "grooming" a child for sexual activity. NSW, South Australia and Tasmania have offences related to grooming and procurement of a child for sexual activity. In these statutes, grooming generally refers to behaviour that is designed to make it easier for the offender to procure a child for sexual activity. For example, an offender might build a relationship of trust with a child and then use that trust to facilitate the sexual abuse. Grooming includes behaviour that encouraging romantic feelings in a child, exposing the child to sexual concepts through pornography, repeated private discussions about sex with a child.

Grooming as an offence makes the prevention of sexual abuse by employees or volunteers more possible, providing the opportunity for earlier intervention in the sequence of behaviour enacted by perpetrators in the lead up to it.

- *There has been virtually no commitment to funding community education campaigns that are sustained over time about child protection.*

Over the last decade, the Australian Childhood Foundation, in conjunction with the Child Abuse Prevention Research Australia at Monash University and Quantum Market Research, has conducted a series of surveys which have sought to track community attitudes about children, child abuse and child protection (Tucci, Mitchell and Goddard, 2001, 2003, 2004a, 2004b, 2005, 2006, 2010).

Consistently, these studies have highlighted that child abuse, as a serious social problem, is poorly understood by the Australian public on a number of levels including its true extent and nature. In addition, the findings illustrate a lack of understanding of the short and long term social and financial costs of child abuse to children, families and the community.

For example, child abuse was perceived as less of a concern than the rising cost of petrol and problems with public transport and roads. Almost half of the people surveyed felt so poorly informed on the issue that they could not even guess at the number of reported cases of child abuse in Australia. Worryingly for children, about a third of respondents in the survey stated that they would not believe children's stories about being abused.

Twenty percent of respondents also lacked the confidence to know what to do if they suspected a child was being abused. A quarter of respondents did not know that they could make an anonymous report to child protection authorities.

A NSW Department of Community Services report (2006) which examined the attitudes of the general public in NSW about child abuse and child protection confirmed that a lack of engagement with the topic and a lack of understanding were concerning and likely to minimize a sense of responsibility to take action to protect children from abuse.

By ignoring child abuse, social responsibility for acting to protect children is positioned on the periphery of our collective consciousness.

The key to preventing child abuse is generating sustained community commitment to understanding the dimensions of the problem, believing in the magnitude of the problem and really appreciating the suffering of children who are traumatized by abuse.

Historically, the Victorian Government has not funded an ongoing campaign to educate the community about child abuse and child protection. It has never funded any educational activity aimed at

- improving community understanding of the extent of the problem of child abuse by volunteers and employees within organisations; and,
- strengthening individual confidence in knowing how to take action to protect children if they are aware that children are being abused or exploited by these employees and/or volunteers.

As with the problem of child abuse in general, the lack of public engagement with the issue has in turn supported and is likely to keep supporting the secrecy and inaction by some organisations when they become aware of abuse or exploitation at the hands of their employees or volunteers.

3. Recommendations for reform.

- Recommendation 1. The Victorian Government should develop, fund and communicate a new cohesive whole of government action plan to address the abuse and exploitation of children by employees and volunteers in organisations which provide a service or activity to children.
- Recommendation 2. The Victorian Government should fund a major independent research program into abuse and exploitation of children by employees and volunteers in organisations which provide a service or activity to children.
- Recommendation 3. The Victorian Government should fully implement the mandatory reporting provisions already contained in the Children, Youth and Families Act 2005 and extend them to
- include members of the clergy and religious orders as a role mandated to report abuse;
 - include the requirement to report abuse and exploitation of children by employees and volunteers of organisations.
- Recommendation 4. The Victorian Government should extend “whistleblower” protection laws to cover religious and not for profit organisations.
- Recommendation 5. The Victorian Government should amend the Working with Children Check Act 2005 to include the use of relevant employment proceedings in the assessment of an individual’s suitability to work with children.
- Recommendation 6. The Victorian Government should legislate for the Victorian Ombudsman to be responsible for overseeing the operations of the Working with Children Check and be granted the same jurisdictional powers into child protection as allowed for in NSW.
- Recommendation 7. The Victorian Government should fund the ACF Safeguarding Children Program to support all organisations, in particular those who do not receive any government funding, to enhance their capacity to implement effective preventative and protective responses to the abuse and exploitation of children by employees and volunteers.
- Recommendation 8. The Victorian Government should amend Section 326(1) of the Victorian Crimes Act 1958 to make it an additional offence to withhold information from Police about an indictable offence with excuse, modelled on the legislation available in NSW.
- Recommendation 9. The Victorian Government should amend the Victorian Crimes Act 1958 to include a new offence of “grooming” as available in NSW legislation.
- Recommendation 10. The Victorian Government should fund an ongoing sustained community education campaign about child abuse and child protection.

References

- Australian Senate Community Affairs References Committee. (2004). *Forgotten Australians: A report on Australians who experienced institutional or out-of-home-care as children*. Canberra: Commonwealth of Australia.
- Australian Senate Community Affairs References Committee. (2009). *Lost Innocents and Forgotten Australians Revisited*. Canberra.
- Erooga, M., Allnock, D. and Telford, P. (2012). *Towards safer organisations II: using the perspectives of convicted sex offenders to inform organisational safeguarding of children*. London: NSPCC.
- Goddard, C. (1996). *Child abuse and child protection: A guide for health, education and welfare workers*. South Melbourne: Churchill Livingstone.
- Goddard, C. and Tucci, J. (2008). *From partial analyses and fragmented services to comprehensive analysis and coordinated outcomes: Responding to child abuse and neglect in Australia*. Australian Childhood Foundation and Child Abuse Prevention Research Australia, Monash University.
- Irenyi, M., Bromfield, L., Beyer and Higgins, D. (2007). *Child maltreatment in organisations: Risk factors and strategies for prevention*. National Child Protection Clearinghouse, Canberra.
- NSW Department of Community Services (2006). *Spotlight on safety: community attitudes to child protection, foster care and parenting*. Department of Community Services NSW, Sydney.
- NSW Ombudsman (2010). *Abuse allegation management training*. NSW Ombudsman.
- Petratis, V. and O'Connor, C. (1999). *Rockspider: The Danger of Paedophiles - Untold Stories*. Melbourne: Hybrid Publishers
- Queensland Crime Commission and Queensland Police Service (2000). *Project AXIS Volume 2 Child Sexual Abuse in Queensland: Responses to the Problem*. Queensland Crime Commission, Brisbane.
- Tucci, J., Mitchell, J. and Goddard, C. (2001). *More Action – Less Talk: Community Responses to Child Abuse Prevention*, Australians Against Child Abuse, Melbourne.
- Tucci, J., Mitchell, J. and Goddard, C. (2003). *Tolerating violence against children: Community attitudes about child abuse and child protection*. Australian Childhood Foundation and the National Research Centre for the Prevention of Child Abuse, Melbourne.
- Tucci, J., Mitchell, J. and Goddard, C. (2004a). *The concerns of Australian parents*. Australian Childhood Foundation and the National Research Centre for the Prevention of Child Abuse, Melbourne.
- Tucci, J., Mitchell, J. and Goddard, C. (2004b). *Do not turn away – Tracking community attitudes about children, child abuse and child protection*. Australian Childhood Foundation and the National Research Centre for the Prevention of Child Abuse, Melbourne.

Tucci, J., Mitchell, J. and Goddard, C. (2005). *The changing face of parenting – Exploring the attitudes of parents in contemporary Australia*. Australian Childhood Foundation and the National Research Centre for the Prevention of Child Abuse, Melbourne.

Tucci, J., Mitchell, J. and Goddard, C. R. (2006). *Out of Sight, Out of Mind: Tracking Community Attitudes about Child Abuse and Child Protection*. Melbourne: Australian Childhood Foundation and the National Research Centre for the Prevention of Child Abuse, Monash University.

Tucci, J., Mitchell, J. and Goddard, C. R. (2010). *Doing Nothing is not an Option: Tracking Community Attitudes about Child Abuse and Child Protection*. Melbourne: Australian Childhood Foundation and the National Research Centre for the Prevention of Child Abuse, Monash University.

Wood, J. (1997). *Royal Commission into the New South Wales Police Service, Final Report Volume IV: The Paedophile Inquiry*. Sydney: New South Wales Government.