



# **ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE**

**STATEMENT OF INTENT  
BY  
MINISTER MCGURK  
ON BEHALF OF  
THE GOVERNMENT OF WESTERN AUSTRALIA**

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DECEMBER 2017

## FOREWORD

I commend the Hon Justice Peter McClellan AM and the other Commissioners for their tireless efforts and dedication to the work of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).



The Royal Commission was established in 2013 and, during that time, it has held 57 public hearings across all capital cities, sitting over 400 days and involving 1,200 witnesses. Out of those public hearings, horrifying stories of child sexual abuse have emerged, exposing the truth that in some cases has been denied for decades.

I applaud the bravery shown by the survivors who have shared their stories, in the hope that by speaking up, others would be encouraged to do the same. Their stories have outlined historic and contemporary cases of child sexual abuse within institutions and a concealment of evidence that has provided a refuge and protection for offenders.

The courage of survivors to come forward must be met by the institutions' strength to acknowledge past failures, address previous injustices and implement significant changes to protect children so that history will not be repeated. Children cannot protect themselves. Keeping children safe, healthy, and supported is of crucial importance, and one of the greatest responsibilities of families, communities, institutions and Government. The community has a right to expect that our children are safe, especially within the institutions we entrust to protect, educate, care for and nurture them.

It is for this reason that the McGowan Government is committed to thoroughly examine the recommendations made in the Royal Commission's Final Report with a view to responding to historical abuse that has occurred, prevent further abuse from happening in the future, and ensure a swift response to abuse should it occur again.

That is why the Government will remove the limitation periods that currently prevent survivors from commencing civil claims for child sexual abuse and will continue working constructively with the Commonwealth in relation to the development of a National Redress Scheme.

It is why, as Minister for Child Protection, I committed in August 2017 to work with other jurisdictions and the Commonwealth to develop a National Statement of Child Safe Principles. Western Australia has also recently conducted a review of the *Children and Community Services Act 2004* resulting in recommendations to improve child protection processes. In light of the work of the Royal Commission it is also timely to investigate the need for independent oversight of the out of home care system.

A more comprehensive whole of Government response to the Royal Commission's recommendations will be developed in the coming months, in cooperation with relevant Government agencies, institutions and other organisations and the community.

A handwritten signature in black ink, appearing to read 'Simone McGurk' with a long horizontal stroke at the end.

**SIMONE MCGURK MLA**

Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services

## **THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE**

The State Government has been strongly supportive of the work of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) since it was established in January 2013. During the past five years, the Government has presented detailed evidence and submissions to the Royal Commission and has participated in public hearings, case studies and round tables throughout the inquiry process.

The Royal Commission has already released three previous reports on *Working with Children Checks* (August 2015), *Redress and Civil Litigation* (September 2015), and *Criminal Justice* (August 2017), covering important aspects of protecting children, responding appropriately, and redressing past abuse.

The Government anticipates that the Royal Commission's Final Report, due to be released in December 2017, will make hundreds of recommendations, many of which will refer to historical abuse and historical policies, systems and practices. Over the coming weeks and months, the Government will fully examine these final recommendations in preparation for a comprehensive, holistic and considered State response which takes into account the systems and protections the Government has already implemented, and which recognises that everyone in our community has a role to play in preventing child sexual abuse.

The recommendations arising from the Royal Commission are likely to be extensive and will impact on many agencies, addressing issues that go beyond those of just child protection. A whole of Government response will therefore involve relevant State departments working cooperatively together to identify the further reforms required and the benefits that can be achieved.

This Statement of Intent outlines the key priorities that are under consideration by the Government, based on the Royal Commission's findings to date, and the needs of Western Australian children as identified by recent key reports on the wellbeing of children and young people in our state.

## **STATEMENT OF INTENT REGARDING THE ROYAL COMMISSION RECOMMENDATIONS**

The State Government commits to righting the wrongs of the past, and undertaking steps to prevent future abuse. Better monitoring systems need to be employed, and improved complaint mechanisms established. Safety standards and screening mechanisms can be strengthened to ensure children are kept secure and protected. Perpetrators of abuse against children, and those who conceal it or fail to act, need to be identified promptly and dealt with under a strengthened criminal justice framework. Ensuring victims are protected and supported is of high priority.

In partnership with institutions and communities, the Government will work to strengthen the protection for children participating in schools, clubs, child care centres, religious groups, recreational groups and out-of-home care by ensuring child safe preventative measures are adopted.

The Government response will outline how Western Australia (WA) will address the Royal Commission's recommendations, following full consideration of the Final Report.

The Government will work to:

- address historical abuse that occurred;
- prevent abuse from happening in the future; and
- identify and respond swiftly to abuse should it happen again.

To oversee and direct this whole of Government response, a Cabinet endorsed process has been put in place which will monitor and report on the progression and consideration of the Royal Commission's recommendations. The Royal Commission and Related Inquiries Sub Group will be tasked with developing a staged Implementation Plan or 'Roadmap' with clear timeframes and priorities informed by relevant State departments, taking into account the Government's budget process next year.

## **CIVIL LITIGATION AND THE STATUTE OF LIMITATIONS**

Western Australia introduced a Bill into Parliament on 22 November 2017 to remove limitation periods (retrospectively and prospectively) in which a survivor of child sexual abuse can commence civil proceedings against those who have wronged them (the Bill). When passed, victims of historical child sexual abuse will be able to seek compensation through the courts for the harm they have suffered.

Importantly, this Bill will provide that if a victim was abused within an unincorporated institution (such as a Church), and the victim would have been able to bring a claim against a holder of an office of authority within the institution at the time of the abuse, then, as long as certain criteria are satisfied, the current holder of an office of authority in the institution can be sued. This addresses the problem that survivors of institutional child sexual abuse are often unable to make claims against unincorporated institutions because, unlike a corporation, they do not have a separate legal personality and it is difficult to identify a proper defendant who can be held legally liable for the abuse. The Bill contains provisions that will allow for liability of an office holder of such an institution to be treated as being held by the successors of that office; and for any judgment or settlement due to a survivor to be satisfied out of the assets held by or for that institution.

The Bill will also allow a person to apply to the court to set aside previous judgments and settlements in a child sexual abuse claim where the judgment was given or a settlement reached on the basis that there was an applicable limitation period.

Survivors of child sexual abuse must have access to competent legal advice and representation without being overcharged by lawyers. The Bill will limit the legal fees that survivors' lawyers can charge in representing their clients.

## **REDRESS SCHEME**

The WA Government (along with all other jurisdictions) is currently in discussions with the Commonwealth regarding its proposed redress scheme for survivors. The WA Government is considering the detail of the Commonwealth's scheme, in order to make a decision about participating in the scheme.

It is noted that WA has operated two ex-gratia payment schemes for survivors of institutional child abuse. *Redress WA* was a \$144 million scheme that ran from 2008 to 2011, providing 5,325 offers of payment, and apologies to survivors. The *Country High*

*Schools Hostels Ex-Gratia Scheme* was established in November 2012 as a response to the abuse that occurred in St Andrew's Hostel, Katanning and other country hostels.<sup>1</sup> The Government allocated \$6 million to the scheme.

## **WORKING WITH CHILDREN CHECK**

The Working with Children Check is a screening strategy that aims to safeguard children by deterring people with the kinds of criminal histories that pose a risk of harm to children. The Working with Children Check identifies and prohibits certain people from engaging in certain types of work that involve children. In Australia, most states and territories have a Working with Children Check scheme. Western Australia's Working with Children Check scheme is compulsory and includes a National Police History Check and the ongoing collection and assessment of relevant information.

A review of WA's *Working with Children (Criminal Record Checking) Act 2004* in 2012 resulted in 23 recommendations for change. Following the release of the Royal Commission's Working with Children Checks report in August 2015, the Department of Communities gave consideration to the further 36 recommendations outlined in that report, and the implications for the WA scheme.

The WA Working with Children Check scheme in many respects provides protections that exceed the minimum standards recommended by the Royal Commission. The Government therefore remains committed to improving the WA Working with Children Check Scheme, giving close consideration to any of the Royal Commission's recommendations that advance the effectiveness of the protections already afforded under the current Working with Children Check legislation and strengthen the already robust case law that has been developed in this jurisdiction.

Discussions at a national level have already commenced, with WA continuing to work with other jurisdictions towards national consistency of Working with Children Checks. Further work will be undertaken to consider if, and what, legislative changes would be most effective and to clarify the implications for WA on agreeing to a nationally consistent scheme.

Information sharing is clearly a vital component of any Working with Children Check Scheme to maximise its potential to protect children from potential future harm and to ensure evidence based decision-making. The Government will work to address barriers preventing access to information relevant to Working with Children Check decisions, as this will enhance child protection.

The Government is currently considering how Working with Children Check applications can be expedited through the use of online applications and whether a similar background checking system can be implemented for individuals working with people with disability and other vulnerable individuals.

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<sup>1</sup> *St Andrew's Hostel Katanning: How the system and society failed our children*, the Hon Peter Blaxell, Special Inquirer, August 2012.

## **REVIEW OF THE CHILDREN AND COMMUNITY SERVICES ACT 2004 (WA)**

Coinciding with the conclusion of the Royal Commission's work, the State Government has just completed a thorough review of the *Children and Community Services Act 2004* (the Act). The Act provides the legislative framework for the protection and care of children in circumstances where their parents have not given, or are unlikely or unable to give, that protection and care, and for promoting the wellbeing of children, other individuals, families and communities. It acknowledges the primary role of parents, families and communities in safeguarding and promoting the wellbeing of children and encourages and supports parents, families and communities in carrying out that role. The report of the review was tabled in the Parliament on 28 November 2017.

The Review examined the operation and effectiveness of the Act in regards to:

- improving consistency in foster carer standards;
- improving outcomes for Aboriginal children, families and communities;
- supporting families exposed to family and domestic violence;
- improving secure care for children at high risk; and
- addressing issues related to the intersection of child protection proceedings and proceedings in the Family Court.

The report contains 70 recommendations, 53 of which involve amendments to strengthen the Act or improve its operation. The Review has a particular focus on improving outcomes for Aboriginal children in care by establishing avenues in the legislation for increasing the participation and involvement of Aboriginal people in decision-making processes. Promoting and maintaining Aboriginal children's connections to family, culture and country is increasingly recognised as key to improving outcomes.

It is also important to note that the Review contains recommendations to increase the independent oversight of the out of home care system; streamline processes between courts; and the timely delivery of government services to children and young people who are or have been in state care.

## **INTRODUCTION OF CHILD SAFE ORGANISATION STANDARDS**

The Government has committed to work with other jurisdictions and the Commonwealth to develop a National Statement of Child Safe Principles. The WA Commissioner for Children and Young People (CCYP) with the support of other organisations, has developed a range of child safe resources to assist WA organisations to identify and manage risks that affect the safety and wellbeing of children and young people.

Child safe and child friendly organisations aim to include, involve and value children. These organisations have child safe and friendly policies and procedures in place; and vigilant recruitment processes, including screening of staff and volunteers to ensure their suitability to care for children. Staff and volunteers are provided with training and clear guidelines that includes knowing the indicators of child abuse.

Child safe and child friendly organisations deliberately and systematically create conditions that reduce the likelihood of harm occurring; create conditions that increase

the likelihood of any harm being discovered; and respond appropriately to any disclosures, allegations or suspicions of harm.

A child safe organisation proactively implements a range of strategies to enhance the overall experiences of children they engage with, balancing the focus on child safety with continued positive interactions and environments that contribute to healthy development. These child-safe strategies include appropriate leadership; governance and culture; quality recruitment and screening; training and education; child safe and friendly policies; and complaint processes and reporting.

In WA, government organisations are considering how to adopt and implement child safe principles.

### **CHILD FRIENDLY AND ACCESSIBLE COMPLAINTS SYSTEMS**

Many organisations<sup>2</sup> have already developed child friendly complaints processes, child safe policies and procedures as well as codes of conduct. These policies include mechanisms for reporting suspected child abuse and require that all staff hold a valid Working with Children Check.

Examples of such initiatives include the Department of Education Complaints System developed in consultation with young people and staff as a result of the recommendations of the St Andrews Hostel Katanning Special Inquiry; and the Safe Clubs 4 Kids initiative which is an innovative partnership between the Department of Local Government, Sport and Cultural Industries, the WA Sports Federation, Working with Children Screening Unit, the WA Police and Surf Life Saving WA.

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<sup>2</sup> State Library of Western Australia; Western Australian Museum; Art Gallery of Western Australia; Department of Local Government, Sport and Cultural Industries; VenuesWest; Department of Health; Department of Communities; Department of Education

## DEPARTMENT OF EDUCATION COMPLAINTS SYSTEM

From November 2011 to August 2012, former Supreme Court Judge, the Hon. Peter Blaxell, conducted a special inquiry to examine the conduct and response of relevant public officials and Government agencies in relation to allegations of sexual abuse at St Andrew's Hostel in Katanning, and related organisations that occurred from 1975 to 1990<sup>1</sup>.

Following the tabling of the report, *St Andrew's Hostel Katanning: How the system and society failed our children*, the Government gave in-principle support for the incorporation of the Country High School Hostels Authority into the Department of Education.

As of 1 July 2017, the *Country High School Hostels Authority Act 1960*, under which the colleges previously operated, was abolished and the *School Education Act 1999* was amended to include Part 6A – Student Residential Colleges. Residential colleges are now incorporated into the Department of Education.

The aim of the change was to provide college managers and staff with access to additional resources and expertise focused on the needs of students and schooling; establishing systems for dealing with child protection; complaints management and staff oversight; and clear accountability and reporting lines.

The Department has established a comprehensive child-focused complaints system that provides residential college students with different avenues to make a complaint.

This includes:

- direct access to a telephone line that connects them to a team of expert child protection investigators;
- a child-focused website through which they can make complaints; and
- communication material targeted toward children and young people to raise awareness of their ability to make complaints in several different ways.

The child-focused complaints system:

- is entirely separate from student residential college facilities and staff;
- uses the Department's Standards and Integrity Directorate as a clearing house for misconduct complaints and for the provision of investigative services;
- provides complainants with the expertise and experience of Standards and Integrity Directorate staff who are trained in protective behaviours and as specialist child interviewers;
- has been formed through a series of focus groups with students in schools and residential colleges;
- has multiple avenues for complaints including a dedicated phone line, an email address and website with an online form; and
- provides information about external avenues of complaint and crisis support including Western Australia Police, Kids Helpline and Crisis Care.

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<sup>1</sup> *St Andrew's Hostel Katanning: How the system and society failed our children*, the Hon Peter Blaxell, Special Inquirer, August 2012.



There is a focus on responding to a complaint or claim in a more open and supportive manner. The best interests, welfare and safety of children is the paramount consideration in the Department's response to contemporary notifications. The residential student complaint phone line calls are answered by staff who have expertise in child protection. Details of the complaint line are provided to students and parents in handbooks, wallet cards, posters and at orientation.

For further information about the Department of Education Complaints System see <https://www.cyp.wa.gov.au/media/1413/good-practice-example-complaints-guidelines-residential-colleges-july-2013.pdf>

### **SAFE CLUBS 4 KIDS INITIATIVE**

The Safe Clubs 4 Kids initiative is a partnership between the Department of Local Government, Sport and Cultural Industries, WA Sports Federation, the Working with Children Screening Unit – Department of Communities, the WA Police – Child Abuse Squad and Surf Life Saving WA. These partnerships are highly valued and are invaluable for the sport and recreation industry.

Safe Clubs 4 Kids aims to encourage and support the sport and active recreation industry to create and maintain safe environments for children and young people.

User friendly resources are available on the Department of Local Government, Sport and Cultural Industries website, encouraging State Sporting Associations and their affiliated clubs to put in place four considerations:

- **Making rules clear** – which involves ensuring policies, procedures and guidelines are clear, followed and easily accessible by all and that there are clear processes for responding to child abuse.
- **Getting the right people** – which involves following an appropriate screening procedure to recruit the right people, including Working with Children Checks.
- **Involving children and young people** – encouraging an open culture where all members know how and where to give feedback, raise concerns and feel confident the club will respond; advising children and young people of their right to feel safe and encouraging them to provide input on what they think would make a great club; regularly promoting that the club prioritises the safety of children and young people.
- **Learning and responding** – which involves having an understanding of children's needs and appropriate responses to any concerns, including reporting.

The resources include brochures, videos, posters, fact sheets and the option to attend workshops which assist State Sporting Associations and their affiliates clubs to:

- increase awareness about how to create child safe environments;
- understand the importance of criminal record checks, including Working with Children Checks;
- learn how to respond to and report a disclosure or suspicion of child abuse;





- identify relevant contacts and resources to provide additional support.

The WA Sports Federation has also produced a series of Safe Clubs 4 Kids videos in partnership with Channel 7 Perth to promote the message that creating a child safe environment is something we can all do.

These videos allow engagement with regional, remote and metropolitan sport and recreation organisations and were designed to assist clubs to get the conversations started to work towards safeguarding the thousands of children and young people involved in sport and recreation across Western Australia.

As an initiative, Safe Clubs 4 Kids has been the recipient of several awards recognising that working collaboratively with various agencies and proactively ensuring a safe environment for children is maintained, will help children develop to their full potential in the area of sport and recreation.

For further information about Safe Clubs 4 Kids see <http://www.dsr.wa.gov.au/support-and-advice/safety-and-integrity-in-sport/sportsafe/safe-clubs-4-kids>

## **CHILD ASSESSMENT, INTERVIEW, ADVOCACY AND TREATMENT**

The Royal Commission has also addressed the systems needed to support children through assessment, interview and treatment. The Department of Communities has a child-centred approach to assessing and responding to child disclosures that may be received from either child protection workers, the ChildFIRST Child Assessment and Interview Team,<sup>3</sup> the Child Protection Unit located at Princess Margaret Hospital; or the Sexual Assault Resource Centre. Where the matter proceeds to a criminal charge, the Child Witness Service provides support to the child victims.

There are integrated and collaborative services already in operation in WA for responding and supporting children and their families affected by child sexual abuse including:

- Thirteen Child Sexual Abuse Therapeutic Services and two Indigenous Healing Services that provide healing, support, counselling and therapeutic responses to children and families affected by child sexual abuse.
- The George Jones Child Advocacy Centre, where professionals from different agencies including police, child protection workers, psychologists and child and family advocates form a multi-disciplinary team to provide services to care for all the needs of children who have been abused, and their families.

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<sup>3</sup> The joint Child Protection and Family Support and Western Australia Police childFIRST Child Assessment and Interview Team

## **EVIDENCE OF CHILDREN AND OTHER VULNERABLE WITNESSES**

Western Australia is widely regarded as leading the country in respect of legislation which allows for video records of interview of child complainants or witnesses during criminal investigations.

The Western Australia Police Force run a Child Assessment and Interview Team, which is responsible for conducting the visual recording of the interviews. The unit consists of a number of specialist trained child interviewers who work collaboratively with specialist child interviewers from the Department of Communities. These interviewers undertake specialised child interview training along with a one-week internship at the Police Child Abuse Squad.

The Department of Justice also runs the Child Witness Service which helps children and young people under 18 years of age who may need to give evidence in court. The service provides practical information and helps children and young people prepare emotionally for court.

The Child Witness Service aims to:

- reduce trauma for children giving evidence in court by appropriate preparation and support;
- undertake assessments of a child's needs in relation to giving evidence and advocate for the child to receive their entitlements under the legislation;
- work with the WA Police and the Director of Public Prosecutions to ensure a child witness and their family are kept fully informed about the progress of a case through the courts; and
- help a child witness prepare a victim impact statement, even if the child is not required to give evidence.

Child victims and witnesses can receive support from the time charges are laid until the matter before the court is finalised.

Any child under the age of 18 years, who may be required to give evidence, can be referred to the Child Witness Service. Referrals usually come from the WA Police, but can also be from a Government agency or the child's caregiver(s). Western Australia has excellent legislation allowing the pre-recording of interviews of child complainants and witnesses and ensuring that video records can be admitted as evidence-in-chief.

For further information about the Child Witness Service please see: <http://www.victimsofcrime.wa.gov.au/C/child.aspx?uid=0883-9898-1908-9198>

## INFORMATION SHARING

Amendments to the *Children and Community Services Act 2004* implemented in January 2016 included expanded information sharing provisions for the safety and wellbeing of children and victims of family and domestic violence.

The State Government recognises that for agencies and services working with children and families there will be times when it is necessary to share information to protect their safety and wellbeing. Sharing information allows a more complete picture to be built about the circumstances of the person or family being provided services.

Information sharing principles have been developed and include:

- The best interests of the child is the paramount consideration when sharing information relevant to a child's wellbeing.
- The safety of a victim is the first priority when sharing information relevant to family and domestic violence.
- Obtaining informed consent prior to sharing information is preferred, unless there is a good reason not to do so.
- Agencies will be open and honest with the person about the information they are sharing with other agencies, unless this would place the person at risk.
- When information about an individual is shared it is done respectfully.
- Sharing information supports working collaboratively to achieve the best possible outcomes for vulnerable children and families.
- Shared information must be recorded and stored securely.
- Information should be shared within the context of the agency's own policies and procedures.

**This statement may contain material that is confronting and distressing. If you require support, please [click on this link](#) to a list of available support services.**

**The Royal Commission's Final Report and other publications can be accessed by [clicking on this link](#).**

**Answers to frequently asked questions can be found by [clicking on this link](#).**