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# COMMISSION FOR CHILDREN AND YOUNG PEOPLE

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## **INQUIRY SEMINAR ON MANDATORY REPORTING**

By Liana Buchanan

*This is an outline of a proposed presentation to be given at the Mandatory Reporting of Child Sexual Abuse seminar held by the Independent Inquiry into Child Sexual Abuse on 27 September 2018.*

### **Introduction**

Like many other countries, Australia has been on a confronting path of acknowledging the prevalence and impact of child sexual abuse—whether in the home or in some of our most trusted organisations.

In 2014, my home state of Victoria conducted a parliamentary inquiry into Child Abuse in Non-Government Organisations (referred to as the *Betrayal of Trust* inquiry), shortly before the federal government initiated a five-year Royal Commission into Institutional Responses to Child Sexual Abuse.

We owe much to these in-depth inquiries—and to the many victim-survivors who agitated for them. The pain, suffering and injustice they faced demonstrates the need for immediate and far-reaching reform.

Both inquiries found extensive evidence that many organisations not only failed to prevent child abuse, but failed to act when suspicions or allegations were raised. This allowed abuse to continue and created an enabling environment for other children to be victimised.

In some cases, this was due to active concealment; prioritising the reputational or other interests of the organisation. However, in many instances, the failures arose due to poor awareness and understanding of child abuse, or due to an absence of clear systems and processes for reporting and managing allegations.

I will briefly discuss three forms of mandatory reporting in place in Victoria, but will focus on the newest scheme, the Reportable Conduct Scheme.

## **Mandatory reporting to Child Protection authorities (1993–onwards)**

Legislation introduced in 1993 created an obligation on certain professionals (including teachers, doctors, nurses and police) to make a report to Child Protection where they believe a child has suffered, or is likely to suffer, significant harm resulting from physical injury or sexual abuse. Failure to report is a criminal offence, punishable by a fine. It is most commonly invoked in the context of abuse in the family home and is now a well established feature of working with children and their families.

## **Mandatory reporting to police: the ‘failure to disclose’ offence (2015–onwards)**

Introduced in 2015 as a direct result of the *Betrayal of Trust* inquiry, this law requires all adults who believe a sexual offence has been committed by an adult against a child under 16 years of age must be reported to police, unless they have a reasonable excuse. The legislation is clear that reasonable excuse does not include consideration of the interests of the alleged perpetrator or the organisation in which abuse has occurred. Failure to report is a criminal offence punishable by up to three years’ imprisonment.

## **Reportable Conduct Scheme (2017–onwards)**

In 2017, the Reportable Conduct Scheme was established to address organisations’ failure to properly respond to allegations of abuse by their workers or volunteers. It requires heads of certain organisations that work with children (such as schools, out-of-home care providers, health and disability services and religious organisations)<sup>1</sup> to notify the Commission for Children and Young People of reportable conduct within three days. A failure to report is a criminal offence, punishable by fine.

Reportable conduct includes physical and sexual abuse, including sexual misconduct that does not meet the definition of a sexual offence, significant neglect or any behaviour that causes significant emotional or psychological harm to a child. It includes conduct that is alleged to have occurred outside the organisation.

The Commission is empowered, in certain circumstances, to intervene and initiate its own investigation, but most often oversees the organisation’s response to ensure it is rigorous and addresses identified risks to children. The scheme does not displace other mandatory reporting requirements, and allegations of criminal conduct must be referred to police. The Commission works closely with police, Child Protection and other relevant agencies to ensure coordinated and effective responses. In addition, substantiated findings are referred to the Working with Children Check unit to prompt and inform a reassessment of that person’s suitability to work with children in future.

## **Initial observations about the Reportable Conduct Scheme**

The clearest theme emerging from the initial operation of the Reportable Conduct Scheme is that it is justified and necessary. The Commission has seen remarkable variability in responses to allegations and some alarmingly poor investigations, even in large, sophisticated organisations.

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<sup>1</sup> Early childhood providers will be covered by the scheme from January 2019.

Many of the problems identified by the Royal Commission continue to feature. This includes a tendency to dismiss or disbelieve children's accounts or disclosures, an inclination to defer to the accounts of adults rather than interviewing children directly, and a reluctance to act against someone who is trusted or valued by the organisation. We expect that over time, the rigour and approach to investigations will improve as the Commission's expectations for best practice are enforced. Indeed we saw some organisations significantly improve within the first year due to the Commission's feedback, support and guidance.

## **Conclusion**

History tells us the price of underestimating child sexual abuse, and of failing to act to stop it, is unacceptably high. Despite our discomfort, disinclination and some financial cost, we must accept that without actively cultivating and maintaining healthy, child-safe communities, children will continue to be harmed and victimised.

We must learn from the compelling evidence emerging across the world demonstrating that abuse thrives in secretive, avoidant cultures. Placing positive, proactive and enforceable requirements on organisations that work with children rightly holds those organisations to account to act on abuse, can help stop these toxic cultures from developing and ultimately serves to keep children safe from harm.

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