



KEYNOTE ADDRESS

AUSTRALIA & NEW ZEALAND EDUCATION LAW ASSOCIATION 2017 CONFERENCE

Wednesday 4 October 2017

Teachers Federation Conference Centre, Sydney

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Commissioner, Royal Commission into Institutional Responses to Child Sexual
Abuse

Acknowledgements

Good morning and thank you for your warm introduction. Let me acknowledge the conference convenor, Deborah Vitlin, President ANZELA NSW and her Honour, Justice Margaret Beazley AO, President of the NSW Court of Appeal, Administrator of the State of NSW.

I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to their Elders past and present.

About the Royal Commission

I am pleased to be invited to address you today on the work we are undertaking. As many of you are no doubt aware, the Royal Commission was established in late 2012 in response to a growing awareness in the community – and in governments – of the problem of child sexual abuse occurring in institutional contexts.

Prior to this, the nature and extent of abuse suffered by children in institutions – as well as the impact it had on their lives and those around them – was not fully understood or appreciated by the wider community.

Our task, as set out in our Terms of Reference, was to remedy this by exploring claims of systemic institutional failures and identify best practice in:

- protecting children against sexual abuse
- responding appropriately to allegations and incidences of abuse
- providing justice to those who were abused
- alleviating the impact on survivors.

Our work has covered government and non-government agencies – across all areas of society – that



are engaged with children. We have examined sporting and recreation clubs and businesses, orphanages and residential care, foster and kinship care, defence force cadets, religious organisations and, of interest to those of you here today, schools.

Our work has involved some of the most prestigious private colleges and the smallest regional single-teacher schools. We have examined special schools for children with disability and schools with very high indigenous populations.

We have heard of abuse by teachers, coaches, tutors, groundsmen, bus drivers and volunteers engaged in schools. We have heard of children abused in preschool and some who have been abused for many years including through their entire time in secondary school – even beyond.

We have examined the important issue of harmful or problematic sexual behaviours by children against other children, including in a case study of six schools, three of which were state primary schools. We also held a policy public hearing on this issue.

We have examined the responses of institutions including those of individual teachers, principals, boards and school systems. We have heard of children being punished for reporting including being caned, suspended or expelled, and of children who were not believed and investigations never carried out.

We have heard of teachers being allowed to stay on even after compelling evidence of wrongdoing. We have heard and examined cases where the leaders of schools failed to report matters to the authorities, even when they have dismissed the staff member – having no regard to the fact that such a person may seek employment in another school and pose a significant risk to other children.

We have heard of principals who withheld information from school boards and parents, and boards who refused to respond appropriately to claims of abuse often using the full range of legal defences to crush the meritorious claims of victims. We have observed education systems that failed to exercise proper supervision of or provide adequate guidance to schools in relation to child sexual abuse matters.

We have heard of ex-students being publicly disbelieved by old boys' networks entrenched in establishment cultures.

All of this information was gained from the collective work of the Commission.

Public hearings



As is typical of a Royal Commission, we held public hearings to receive evidence and examine issues in detail. Our program was extensive, we examined more than 1.2 million documents and heard evidence from in excess of 1,200 witnesses in relation to more than 100 institutions. Over the course of more than 440 days, we held hearings in every state and territory – as well as in a number of regional centres.

The majority of our public hearings examined the conduct of individuals and institutions. Others had a policy focus covering issues such as redress and civil litigation, and criminal justice. Of the 57 public hearings we held 13, or slightly more than 20 per cent, provided an in-depth investigation of an educational institution.

Our public hearings were open to the media and the public. They were also live-streamed on our website – a first for any Royal Commission. As a result of this coverage, public hearings have significantly raised awareness of the nature, cause and impact of child sexual abuse in Australian institutions. They have started a national conversation.

Findings from our public hearings are published as case study reports. To date, we have published 35 case study reports which are available on our website.

Private sessions

A less 'typical' means we used to gather information was through the unique process called a 'private session'. It was an incredibly important aspect of bearing witness to the abuse that has occurred and allowing survivors to tell their stories. In private sessions, survivors spoke directly with a Commissioner about their experience of child sexual abuse while in the care of an institution and the impact it had on their lives.

By speaking directly with survivors – and we will have spoken to over 8,000 by the time we complete our work – we gained valuable insights into the life-long impact of child sexual abuse, the institutions in which it occurs in and those who commit abuse. Over 4,000 individual institutions were reported to us, slightly more than 1,000 were schools. Of all the abuse we heard about in private sessions, 21 per cent was perpetrated by teachers.

To date, we have referred more than 2,300 matters to authorities, mainly the police.

Policy and research

When we started our inquiry, there was a considerable lack of research into child sexual abuse in institutional contexts – both in Australia and overseas. The Royal Commission has had an



opportunity to address some of these gaps, accessing expertise from national and international authorities across a range of disciplines.

By the end we will have published 59 research reports across areas including prevention, identification, response and justice for victims. We have also published consultation papers on a range of diverse issues and received over 800 written submissions. Again, that material is available on our website.

In relation to schools, Issues Paper 9, released in July 2015, called for submissions on the area of *Addressing the risk of child sexual abuse in primary and secondary schools* and, later that year, we held a roundtable dedicated to the issue of schools.

What we have heard specifically about schools

Schools are highly valued in Australian society. Whilst their primary function is to provide formal education, schools have a much broader influence on children's lives, helping them to develop life and social skills as well as fostering their health and wellbeing.

Given the limited research into child sexual abuse in schools when we started our inquiry, one of our main tasks was to find out if there was anything specific about schools that shaped the nature and circumstances of abuse and the way the institutions respond.

We have heard about child sexual abuse in a range of schools. The problems span government and non-government schools – and by non-government we mean Catholic or independent schools. From what we have heard at the Royal Commission, a higher proportion of child sexual abuse has taken place in non-government schools.

Of all those who attended a private session between May 2013 and May 2017, almost one in three said they were abused in a school.

Of these survivors, almost 64 per cent reported abuse by a teacher. In relation to the forms of sexual abuse they experienced:

- slightly more than three-quarters reported non-penetrative contact abuse and around 40 percent reported penetrative abuse
- Other forms of abuse included violations of privacy (21.6 per cent) and exposure to sexual acts and materials (12.7 per cent).



From private sessions, we also gathered information about the types of schools where abuse had occurred with:

- around 75 per cent occurring in non-government schools (although more contemporary police data shows for the period 2008-13 the majority of reports of abuse has been in relation to government schools).
- of these non-government schools, almost 75 per cent of survivors told us they were abused in a Catholic school
- almost one in three referred to abuse in a boarding school.

A common feature of abuse in non-government schools was instances of ‘clusters’, where a perpetrator or perpetrators would abuse multiple students over a period of time.

Let’s look at the characteristics that make schools, more susceptible to incidents of child sexual abuse.

Cause

As I mentioned earlier, public hearings significantly contributed to Commissioners’ understanding of institutional shortcomings, particularly in relation to systemic issues. Through public hearings, we learned about a number of schools who had responded inadequately to reports of child sexual abuse from a range of points of view including victims, parents, teachers, school leaders, policymakers, government representatives and academics.

From this, we were able to identify a number of underlying cultural and governance factors that these schools had in common. I would like to speak more about some of these factors by way of a case study.

In December 2016, the Royal Commission held a public hearing into Geelong Grammar’s response to allegations of child sexual abuse going back to 1956. While Geelong Grammar – one of Australia’s most prestigious schools – is hardly a typical educational institution, the case study demonstrates a number of cultural and governance traits common in schools where child sexual abuse occurs.

I do not wish to single out Geelong Grammar for particular attention – other schools examined by the Royal Commission had similar issues and they are set out in other case studies that have been or will be published. Nevertheless, the issues in this case study are relevant for many here today.



At the Geelong Grammar hearing, thirteen former students gave evidence that they were abused while at the school. Two of these witnesses reported the abuse to the school around the time it happened. No action was taken, and the perpetrators remained at the school.

Five former members of staff have since been convicted of child sex offences.

We also heard evidence from former staff, headmasters and parents of some of the victims.

Cultural issues

Within a school community, a school's culture may set the tone for interactions between its leadership, staff, students and their parents. I would like to start by looking at some of the main cultural issues common to the many of the schools we heard about during the course of our inquiry.

- leadership that values the school's reputation and finances over children's welfare
- authoritarian cultures which expect obedience and loyalty and undervalue children's voices.

From our commissioned research we learned that, in some cases, institutions such as elite non-government schools, are so concerned with their reputation that ensuring the continuation of the school is seen as more important than the education and welfare of students.

Maintaining the school's reputation was not only a feature of the culture of Geelong Grammar. At our public hearing into Knox Grammar, one former student gave evidence that the school's headmaster at the time was:

a bully and a coward whose primary consideration was to maintain the reputation of the school at the expense of its students.

The authoritarian culture of Geelong Grammar was described by one survivor during the public hearing as one of 'discipline and old school traditions' and that the school's reputation was paramount.

We heard that the school's culture cultivated a 'code of silence' which prevented students reporting sexual abuse and bullying. This was so prevalent that some survivors told us that they did not think that there was anywhere in the school they could go to make a report and others assumed that even if they did, their value was such that they would not be believed.



Governance

Strong governance means a school's leaders and staff understand their obligation to keep children safe and are held accountable for not meeting these obligations. Alternatively, poor governance contributes to the risk of child sexual abuse – something that was common across the schools featured in public hearings. Some of the governance-related issues we heard about included:

- inadequate or non-existent complaints processes
- insufficient record keeping and information sharing procedures
- lack of rigour in pre-employment screening.

In our case study, after the mother of one Geelong Grammar survivor reported his abuse to the school, the victim was called to a meeting with school authorities but his complaint was not reported to any external authority, including police. The school did not investigate the complaint and, furthermore, the survivor was told not to tell anyone about the incident.

This shows that there was a lack of formal systems, policies or procedures in place to handle reports of child sexual abuse or help prevent it. Indeed prior to 1994, the school had no such policies in place.

Poor record keeping at the school resulted in incomplete, inaccurate and missing records. We heard of one incident where after a report of historical abuse of a student was received, the teacher in question was able to retire – and no report made to police – because no records of any allegations concerning the teacher could be found.

Subsequently, the teacher pleaded guilty to 10 counts of gross indecency against a Geelong Grammar student.

Barriers to reporting

A school's culture and governance may undermine its ability to prevent child sexual abuse. While this is an extremely important area, I would like to speak about the way a school's culture and governance may create barriers to disclosure of abuse by victims and reporting of abuse for victims and staff.

Victims

We heard that multiple factors that prevent victims from disclosing the abuse at the time. This can include:



- authoritarian, hierarchical regimes
- fear of reprisals
- the institutionalised use of violence to reduce children’s resistance to abuse and elicit their silence
- grooming.

Again, a school’s culture comes into effect when we look at barriers to disclosing. Hierarchies in the general school environment are often recast in the ‘playground’.

Where a ‘code of silence’ prevented students from reporting acts of sexual abuse committed by their peers for fear of retaliation.

A survivor gave evidence to say that, after making a report about sexual abuse to school authorities, he was asked not to discuss the incident with anyone. When later overheard discussing the abuse with some classmates, he was asked to leave the school.

Interesting research commissioned by the Royal Commission which spoke to children directly, identified that children will look to see how a school deals with bullying before deciding whether to disclose any sexual abuse.

Staff

We were told that reporting known or suspected child sexual abuse can be difficult for teachers.

Along with a lack of knowledge about child sexual abuse and clear governance in relation to reporting, teachers may fear making a false accusation that could damage the reputation of an innocent colleague. Others feared retaliation, particularly if the suspected perpetrator was a high-status member of staff.

At another public hearing into an independent school in Perth, one teacher told us about experiencing “nastiness” from some older male teachers after reporting her concerns about a colleague. She told the Royal Commission:

One [teacher] even attempted to run me over one day. I don’t believe he would have, but the intent to make me fearful was there.

Even when there are reporting procedures in place, the system still fails. At one our roundtables, a participant described the attitude of some teachers:



My job is to disclose this to the next person, and I have no ownership of it, I don't follow up on it, all I know is that I take this piece of paper from here to there and I have passed it to the next person.

In our case studies teachers gave evidence that they felt 'constrained' about doing more to report child sexual abuse to the authorities by the hierarchical structure of the school and fear of being seen to be disloyal.

Additional risk factors

Of course, in addition to culture and governance issues there are also particular institutional risk factors that increase the likelihood of child sexual abuse taking place.

Earlier I mentioned that of all those attending private sessions who told us about abuse that occurred in a school, almost one in three said it was a boarding school. Boarding school settings provide frequent opportunities for adults and children to be alone and develop close personal relationships. And there is additional risk with adults involved in children's personal care, such as bathing or dressing, where there are opportunities to cross professional boundaries

What we heard about victims of abuse

Private sessions have provided a great deal of information about the nature of child sexual abuse in schools.

Around 75 per cent of the survivors who told us they were abused in a school were male. The vast majority told us they were abused before 1990. More than half said they were first abused between the ages of 10 and 14 years. And the average length of abuse of both male and female survivors was between one-to-two years.

Impacts

The impacts of child sexual abuse are unique for every survivor. For many it is extremely damaging, causing deep, pervasive trauma. For others, the impact has not been quite so acute. Despite many differences, one impact we heard about during private sessions was adverse effects on survivors' mental health. Other impacts that we heard about from survivors include:

- problems with interpersonal relations
- reduced educational and employment outcomes
- reduced economic security.



One survivor spoke of suffering “feelings of guilt for being a victim of abuse and failing to recognise or stop it then” and another said it was like “receiving a 47-year sentence which started when I was 11 years old”.

One former student from the 1950s told us how he felt at the time of the abuse:

I don't know how to convey in words the absolute sense of being unable to escape this hell for three long years. As a little boy, that length of time seemed like an eternity. There was no light. It was like being buried alive.

Perpetrators of abuse

While there is no one profile of a child abuse offender, theories suggest there may be three types of perpetrators who sexually abuse children. These include:

- serial, predatory perpetrators
- opportunistic, occasional perpetrators.
- situational perpetrators

Serial perpetrators are high-frequency chronic offenders. They choose victims based on situational factors and are likely to manipulate environments to create opportunities to abuse. In school environment they often engaged in physical and emotional abuse as part of or leading to sexual abuse.

Opportunistic perpetrators will commit abuse in reaction to environmental factors. They often behave impulsively when overcome by temptation or a temporary failure of self-control. For example, they might commit abuse if they are alone with a child who is bathing. They are not necessarily predisposed to having sex with children, but seek sexual gratification.

Situational perpetrators usually commit fewer offences involving fewer victims. Their behaviours are strongly influenced by personal and social constraints. They are more likely to commit abuse where situational factors weaken these constraints, for instance when there is a lack of reporting procedures. They often lead to long-term abusive relationships, distorted notions of affection, and lead to extreme confusion in victims both at the time of abuse and into later life.

Of those survivors in private sessions who told us they had been abused in a school, most told us about being sexually abused by an adult who was male.



Of course, not all perpetrators in schools are adults. It is important to note that children with harmful sexual behaviours may abuse other children. We heard from some survivors that they were sexually abused by another child in a school.

We have heard that abuse that involved children with harmful sexual behaviours was often not recognised by school staff as child sexual abuse. As a result, victims and their families were not supported by schools.

What is our response?

The Royal Commission is currently preparing its Final Report which brings together what we have learned during our five-year inquiry. It sets out what we have heard, our conclusions and recommendations to better prevent and respond to child sexual abuse in institutions.

While this report will not be handed down to Government until 15 December, the Royal Commission has published recommendations in a number of previously released reports. I'd like to turn now two of these reports – both of which have a strong legal focus and should be of interest to those of you here today – Redress and Civil Litigation published in 2015 and Criminal Justice, published in August this year.

The Royal Commission sees real value in using legal instruments to bring about reforms to:

- better protect children from sexual abuse
- improve the way institutions respond to abuse
- seek justice for survivors.

Civil litigation

In the past, Australian courts have had difficulty holding institutions accountable for deliberate criminal acts – such as sexual abuse – committed by their members or employees. In our Redress and civil litigation report, we examined how holding institutions and their leaders to account for damages arising from child sexual abuse has considerable potential to bring about cultural change.

As a result, we recommended that all states and territories introduce legislation to impose a non-delegable duty (strict liability) on certain institutions – such as day and boarding schools – for institutional child sexual abuse (Recommendation 88).

Even if states and territories decide not to introduce the non-delegable duty legislation, we recommend that legislation is introduced to make all institutions liable for child sexual abuse by



someone associated with their organisation – unless the institution can demonstrate that it took reasonable steps to prevent the abuse. Effectively this reverses the onus of proof.

Importantly for many of you here today, we recommended that institutions adopt a model litigant approach in dealing with claims. This should already be the case for state and territory governments. It should also be the case for non-government organisations. The role of lawyers and their advice has been subject to examination in a number of hearings. Lessons need to be learnt by lawyers and those instructing them. The vulnerability of the claimants should weigh heavily in the considerations of all involved.

Criminal Justice

In our recently released report on criminal justice, we recommend the introduction of two new criminal offences that will have significant consequences for those working in education.

These offences are ‘third-party’ offences that apply to people other than the perpetrator of the abuse. In each case, the offence can be committed by an adult in the institution, rather than the institution itself.

The first offence is the **failure to report offence**. This legislative change would require adults working in an institution to report to police circumstances where they know, suspect, or should have suspected, that another adult associated with the institution was sexually abusing or had sexually abused a child.

The second offence is the **failure to protect offence**. This change would require an adult in the institution who knows there is a substantial risk that another adult associated with the institution will commit a child sexual offence, and who has the power or responsibility to reduce or remove the risk, to reduce or remove the risk. If they negligently fail to do so, they would commit the offence.

Commissioners believe that the introduction of these new criminal offences will reinforce the regulatory and policy measures that we propose to improve child safety in institutions. I would now like to turn to some of these additional measures.

Child safe organisations

While the concept of ‘child safe’ is probably familiar to most of you, when considered within the history of institutionalised care of children, it is relatively recent. The idea of child safe organisations emerged in Australia in the last decade in response to increased community



awareness of the vulnerability of children to harm, including children in the care of institutions.

We have invested a great deal of time in examining what makes institutions 'child safe'. As you would know, child safe institutions are those that create cultures, adopt strategies and take action to prevent child sexual abuse. They achieve this by:

- reducing the likelihood of harm to children
- increasing the likelihood of identifying harm and
- responding appropriately to any disclosures, allegations or suspicions of harm.

We welcome recent developments across many jurisdictions to approve child safe approaches in institutions.

After extensive analysis of available research and findings, we have identified ten Child Safe Standards that we consider fundamental to a child safe organisation. They are presented in detail in the research report *Key elements of child safe organisations* which you can find on our website. I'd like to draw your attention to a few in particular.

The first is that **child safety is embedded in institutional leadership, governance and culture.**

We have established that good governance is accountable, transparent, equitable, inclusive and fair. We have seen time and again in our public hearings, how critical these elements are - where responsibility for preventing child abuse is seen as the shared responsibility of all adults.

Stakeholders have argued that child safe governance involves not just leadership but also management styles that are child friendly, open and egalitarian. Conversely, rigid, and overly hierarchical governance disconnects those governing from regular contact with staff, parents and children. It increases the risk of child sexual abuse going undetected by acting as a barrier to staff and children reporting abuse. Most importantly many school boards and leadership fail to ask the most basic question that is in whose interest do we act? It is clear from the case studies and private sessions that many schools did not place the interests of the child above other interests. We believe that the culture, leadership and governance of schools must at all time be geared to acting in the best interests of children.

A second Child Safe Standard is that **children participate in decisions directly affecting them and are taken seriously.** We hear a lot about this. Indeed, it is a core right under the United National Convention on the Rights of the Child. Children who are empowered are more likely to disclose harm. Early and safe disclosure is critical.



As we heard from survivors, some did not report sexual abuse at the time it was occurring because they did not think they would be believed or did not know to whom they could report. Other survivors did not report being sexually abused because they felt they would be ostracised or bullied if they did so. We know that the trauma caused by being silenced, or disbelieved, can be as impactful as the harm itself.

Interestingly research commissioned by us which involved listening to children elicited an interesting insight. Children reported that they would only disclose abuse, including in schools if it were safe to do so. And one measure of safety is the way in which the school or institution is perceived by children to be dealing with bullying.

A third Child Safe Standard of child safe institutions we identified is that **families and communities are informed and involved**. It is critical that institutions caring for children engage in open, two-way communication with families and communities about its child safety approach and that relevant information is accessible. This element also stipulates that families and communities have a say in the institution's policies and practices and that families and communities are informed about the institution's operations and governance.

Another key element we identified is that **processes to respond to complaints of child sexual abuse are child focussed**. Policies must clearly outline roles and responsibilities, approaches to dealing with different types of complaints and obligations to act and report. Processes must be understood by children, staff, families and volunteers. Further, complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met. Too often we have heard about the lack of policies or procedures in place in schools to manage allegations of child sexual abuse or keep children safe. The Royal Commission found that former Principal of Geelong Grammar School Mr John Lewis did not take any steps to prepare policies or procedures to protect the safety and welfare of the students at Geelong Grammar. Even he conceded:

[I]t would have been a good thing to have done something in that area, if only to make sure that pupils and their parents understood that it was their proper, necessary right to bring such matters to attention and not to feel embarrassed in a way that might prevent them from doing so.

Our final report will include an entire volume on making institutions child safe. We have been considering the role of the Commonwealth, state and territory governments in the implementation of child safe elements. Our report will recommend the best way to implement these child safe



standards to ensure they are nationally consistent, compliant, and that compliance is monitored and enforced.

Working With Children Checks

All of you here today would be familiar with Working with Children Checks. They are one of a range of strategies used to help make organisations, including schools, safe. They ensure the right people are selected to work with children. We are aware of measures some jurisdictions have taken to strengthen and simplify working with children checks in recent times.

Although they are an important tool, on their own Working With Children Checks do not make organisations safe for children. On the contrary, an over reliance on Working With Children Checks can create a false sense of security and even complacency, due to the belief that those who have undergone these checks do not pose any risks to children. This is not the case. We know that a suite of strategies and policies are necessary to keep children safe.

Working with Children Checks in different states have common features but also operate differently. We do not even have the capacity to effectively exchange of information between states. The schemes are not integrated and portability is a major problem. There is unnecessary duplication across the schemes and inadequate monitoring of Working With Children Check cardholders. The result is that children are being given different levels of protection depending on what state they are in.

We released a report on Working With Children Checks some time ago. In it, we recommended a national approach. This approach would involve creating a centralised database. In effect, there would be one accreditation operating across jurisdictions. We also identified a set of standards so that key aspects of Working With Children Checks regimes are dealt with in the same way.

Regulation and oversight

Regulation and oversight of institutions is a further area in which inconsistency emerges as an important issue.

A research report by Professor Ben Mathews from the Queensland University of Technology examined the strengths and weaknesses of existing regulatory and oversight bodies in protecting children from sexual abuse in Australia. Professor Mathews examined ombudsman's offices, reportable conduct schemes, children's commissions, community visitors' schemes, child advocates and children's guardians and crime and misconduct commissions. He also looked at regulatory



systems across a range of sectors including non-government schools, early childhood and care, the medical sector and sport and recreation. He found there are differences across jurisdictions in presence, nature, scope and powers.

Aside from the largely similar ombudsman's offices, the report finds differences in these bodies are due to their different parameters under state and territory legislation and some governments invest more heavily in some agencies than in others. As a result, some of these bodies have features and resourcing that enable greater oversight of institutions in the context of child sexual abuse.

If our goal is to do our best to protect all children from child sexual abuse then this lack of consistency in regulation and oversight, including in schools, is hard to justify. There is little doubt that it is time for greater consistency in relation to regulation and oversight mechanisms across Australia. Our final report will be addressing this issue in greater detail and providing relevant recommendations in relation to reportable conduct regimes, information sharing, teachers' registers and other matters directly relevant to schools.

Conclusion

The Royal Commission will conclude on December 15 when we hand over our comprehensive final report to Government. It will cover several volumes, containing hundreds of recommendations. Some will apply across all institutions engaged with children. Others will be targeted at specific institutional types or settings such as schools or out-of-home care. Whilst others still will be specific to particular organisations such as certain religious bodies.

We believe our work has generated a momentum for change. The Royal Commission has shifted the conversation on institutional child sexual abuse. I encourage you to keep this conversation alive well into the future.

As academics, legal practitioners and educators you have an important role in building on our legacy and ensuring all our institutions – including our schools – are a safe place for children.