



CAFFSA ELECTION POLICY POSITION

Introduction of Reportable Conduct Schemes: Executive Summary

January 2022

Background: The CAFFSA policy position paper for the South Australian 2022 State Election was forwarded on 10 Sept 2021 in correspondence to Minister Sanderson and Hon Katrine Hildyard. The first recommendation is consistent with recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. It calls for the **adoption and implementation of a Reportable Conduct Scheme in South Australia, based on the NSW model.**

Such a scheme should provide independent oversight of the handling of child abuse and neglect allegations against sector employees and volunteers. It would oversee how organisations and institutions prevent and respond to allegations of child abuse and misconduct by employees and volunteers.

SA Government Response to the Royal Commission re their recommendation of a Reportable Conduct Scheme: The South Australian Government formally replied that various mechanisms already exist in SA to allow government bodies or statutory officers to oversee aspects of child protection matters, including the:

- Guardian for Children and Young People
- Commissioner for Children and Young People
- Child Death and Serious Injury Review Committee

- Child Development Council.

The SA Government further noted that the capacity of the Ombudsman's Office is being developed to respond to child protection complaints that are referred by the Commissioner or Guardian for Children and Young People.

None of the agencies cited in the SA Government's response currently have a legislative base that would allow for a comprehensive reportable conduct scheme as recommended by the Royal Commission, nor do they provide for the reporting of all forms of child abuse and neglect by the more recently accepted broader categories of adults who work closely with children.

A description of the NSW model, and how it may be implemented in SA is explored. Adopting a reportable conduct scheme similar to that of NSW would build on the capacity of organisations in SA to respond appropriately and effectively to allegations of all types of child abuse and neglect across a much broader range of agencies. This would be a key feature of ensuring child-safe organisations. It would provide oversight of all reportable conduct matters (physical, sexual and emotional abuse and neglect) and investigations where the person believed responsible is employed or volunteers in a capacity with power over, or responsibility for, children and young people.

The legislative responsibility of an oversight body (possibly undertaken by the SA Ombudsman or the Guardian for Children and Young People) would need to be broadened. This would provide an additional level of monitoring and enhance public confidence in the outcomes of child abuse investigations.

Recommendation: That the incoming South Australian Government implement a Reportable Conduct Scheme in SA following the 2022 Election.

CAFFSA ELECTION POLICY POSITION

Introduction of Reportable Conduct Schemes

January 2022

The CAFFSA policy positions, forwarded to Minister Sanderson and Hon Katrine Hildyard, include the introduction of a Reportable Conduct Scheme to improve the safety of children in SA. The recommendation is consistent with recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. CAFFSA's recommendation is:

A Reportable Conduct Scheme in South Australia

CAFFSA supports the adoption and implementation of a Reportable Conduct Scheme in South Australia.

Such a scheme should provide independent oversight of the handling of child abuse and neglect allegations against sector employees and volunteers. It would oversee how organisations and institutions prevent and respond to allegations of child abuse and misconduct by employees and volunteers.

Such a scheme would assist in:

- Safeguarding children and young people;*
- Work with institutions and organisations to improve systems in preventing and responding to reportable conduct;*
- Provide training and advice; and*
- Assessing responses to reportable conduct to ensure processes are fair, transparent and conducted in a timely manner.*

To achieve a reportable conduct scheme, the legislative responsibility of an appropriate oversight body (possibly the SA Ombudsman or the Guardian for Children and Young People) would need to be broadened to include oversight and review powers on matters of all forms of child abuse and neglect similar to the NSW model. This would provide an additional level of monitoring and enhance public confidence in the outcomes of child abuse investigations.

Background

In South Australia and across the nation, there have been a number of inquiries into how organisations respond to allegations of abuse or neglect against children in their care. The community has been uniformly shocked by the actions and omissions of many of the organisations.

At the National level, the Royal Commission into Institutional Responses to Child Sexual Abuse released its final report in December 2017. It included findings regarding the failure of institutions and organisations across several sectors to protect children from abuse and/or to support or respond adequately to children in circumstances where instances of abuse became known to them.

The Commission's report sets out recommendations in relation to creating child safe institutions, improving the responses to, and reporting of child sexual abuse, along with record keeping and information sharing across sectors. States and Territories must report on progress in implementing each recommendation.

The report sets out recommendations specific to a number of sectors and institutions, including contemporary out-of-home care institutions, care, support, advocacy and therapeutic service providers; schools; religious institutions, contemporary detention environments; as well as sport, recreation, arts, culture, community and hobby groups.

Specific to this brief, the following recommendations (inter alia) were made.

Royal Commission Recommendation 7.09:

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which obliges heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

The SA Government response to date is as follows:

For further consideration.

This recommendation requires further consideration by the Government of South Australia.

South Australia is currently implementing the recommendations made in South Australia's Child Protection Systems Royal Commission, which concluded in August 2016.

The South Australian Royal Commission investigated the adequacy of existing laws and policies in the state's child protection system for children at risk of harm (including children at risk of sexual abuse). In the report, Royal Commissioner Nyland made 260 recommendations for improvements to the child protection system.

Various mechanisms already exist in South Australia to allow government bodies or statutory officers to oversee aspects of child protection matters, including:

- Guardian for Children and Young People: all allegations of child sexual abuse in out-of-home care are reported to the guardian, who keeps a record of matters and engages with the police and the Care Concerns Investigation Unit of the Department for Education*
- Commissioner for Children and Young People (established under the Children and Young People (Oversight and Advocacy Bodies) Act 2016)*
- Child Death and Serious Injury Review Committee*
- Child Development Council.*

Additionally, the capacity of the Ombudsman's Office is being developed to respond to child protection complaints that are referred by the Commissioner or Guardian for Children and Young People.

Further, more detailed recommendations relating to reportable conduct schemes were made in the Royal Commission's Final Report. They are attached at Appendix A.

Shortcomings in the SA Government response

None of the agencies cited in the SA Government's response currently have a legislative base that would allow for a comprehensive reportable conduct scheme, nor do they provide for the reporting of all forms of child abuse and neglect by the more recently accepted broader categories of adults who work closely with children. Relevant legislation and respective roles are as follows:

The Children and Young People (Oversight and Advocacy Bodies) Act 2016 is committed to the Minister for Education. The Act establishes five oversight and advocacy bodies mentioned in the SA Government response. It applies to children and young people, from birth to 18 years in South Australia. These bodies include the Child Development Council, Commissioner for Children and Young People, Commissioner for Aboriginal Children and Young People, Guardian for Children and Young People and Child Death and Serious Injury Review Committee.

The Office of The Guardian for Children & Young People has a range of functions to promote the safety and wellbeing of children and young people in care. These include:

- promoting their rights and best interests
- advocating for them
- monitoring their circumstances to see if their wellbeing needs, rights and interests are being met
- advising the Minister for Child Protection on the quality of care provided to them
- making inquiries and advising the Minister about improvements that are needed to systems which affect their care
- investigating and reporting to the Minister on specific matters referred by the Minister

The Guardian is an independent role which reports to the Minister for Child Protection.

The legislation creating the statutory officer position of the **SA Commissioner for Children and Young People and the Commissioner for Aboriginal Children and Young People** grants powers and functions to promote and advocate for the rights, interests and wellbeing of all children and young people living in South Australia and to help bring about improvements to the systems that negatively impact on them most. The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

The Child Death and Serious Injury Review Committee (CDSIRC) contributes to the prevention of death and serious injury of South Australian children.

The committee:

- is an independent, statutory body that has reviewed the circumstances and causes of all child deaths in South Australia since 2005
- collects and analyses information about these deaths from government agencies including the Office of Births, Deaths and Marriages, the Department for Child Protection, and the South Australian Coroner's Court
- reviews some deaths and serious injuries of children in more detail, and might look for information from agencies such as the Department for Education, SA Health, non-government organisations and private practitioners if they have provided services to the child or their family.

The committee provides recommendations to the Minister for Education about improvements to legislation, policies or administrative issues based on its reviews, and on the statistical information about child deaths that it has collected and analysed.

The Child Development Council was established in 2018 and its mandate is to produce a whole-of- government (state and local government) Outcomes Framework for Children and Young People.

The Outcomes Framework was developed to track, monitor and report over time on the agreed outcomes for South Australia's children and young people in the domains of health, safety, wellbeing, education and citizenship.

The Safety Indicators monitored under the measure: *Children and young people are safe from abuse and neglect*, whilst important, do not provide the overall protective surveillance across all types of child abuse and neglect of a Reportable Conduct Scheme. The Safety Indicators include:

- Number of children and young people being admitted to out-of-home care
- Proportion of children twelve months old or under being notified to the child protection system
- Proportion of children five years being notified to the child protection system
- Proportion of children and young people feeling unsafe in their local area at night
- Number of children and young people who are victims of offences reported to police
- Number of arrests involving young people 10-17 years

The final plank in the Government of SA's Response to the Royal Commission's recommendation for the introduction of a uniform Reportable Conduct Scheme is to note that the capacity of the **SA Ombudsman's Office** is being developed to respond to child protection complaints that are referred by the Commissioner or Guardian for Children and Young People. It is important to note, however, that the brief of the Commissioner for Children and Young People, and the Guardian is far too narrow to satisfy the Royal Commission recommendations.

Rationale for the NSW model as the preferred model for CAFFSA (and as recommended by the Royal Commission)

Adopting a reportable conduct scheme similar to that of NSW would build on the capacity of organisations in SA to respond appropriately and effectively to allegations of child all types of child abuse and neglect across a much broader range of agencies. This would be a key feature of ensuring child-safe organisations. It would provide oversight of all reportable conduct matters (physical, sexual and emotional abuse and neglect) and investigations where the person believed responsible is employed or

volunteers in a capacity with power over, or responsibility for, children and young people.

Including oversight and review powers on matters of all forms of child abuse would provide an additional level of monitoring and enhance public confidence in the outcomes of child abuse investigations and ensure compliance with the Royal Commission recommendations. The new system would also provide much-needed oversight, direction and support for designated agencies to conduct their investigations.

The NSW reportable conduct scheme has been in operation since 1999, has been introduced in a similar form in Victoria and is currently under active consideration by the ACT Government.

The NSW model is recognised nationally. The Chief Executive Officer of the Australian Childhood Foundation, Dr Joe Tucci, recently stated:

“[The NSW Scheme] has worked with organisations in a capacity building way and over time increased the level of scrutiny that organisations can come under in relation to the way that they investigate claims or allegations of abuse by volunteers and employees. I cannot think of a better system in place anywhere in the world”.¹

As noted earlier, implementing a similar system to NSW would provide a more robust and protective system for children where extra-familial abuse has occurred. It is suggested that broadening the responsibility of either the SA Ombudsman (Ombudsman) or the Children and Young Persons Guardian to include oversight and review powers on matters of child abuse similar to the NSW model would be the most sensible option, given the current role and function of both organisations.

1

Operation of the NSW Scheme

The NSW Reportable Conduct Scheme is operated by the Office of the Children's Guardian under the **Children's Guardian Act 2019**.

The scheme monitors how certain organisations investigate and report on types of conduct ('reportable allegations' or 'reportable convictions') made against their employees, volunteers or certain contractors who provide services to children. The scheme also covers religious bodies, in response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

When the head of a 'relevant entity' becomes aware of a reportable allegation or a reportable conviction, the head of that entity must notify the Office of the Children's Guardian within seven business days and conduct an investigation into the allegations. If the final entity report is not ready to submit within 30 calendar days, the head must provide an interim report with information about the progress of the investigation and an expected timeframe for completion.

The scheme covers all of the entities' relevant workers including paid employees or volunteers providing services to children as well as contractors delivering services to children (who hold, or are required to hold, a Working With Children Check) in those entities.

The scheme does not cover personal arrangements made for the education and care of children by parents and carers, such as babysitting arrangements or private tuition and coaching.

The heads of relevant entities must notify the Office of the Children's Guardian of all reportable allegations and convictions. That includes the inside work conduct of all employees and outside work conduct of employees of Schedule 1 entities and of any relevant entities where a volunteer or contractor is required to hold a Working With Children Check.

Following notification of a reportable allegation, the Office of the Children’s Guardian can provide guidance to the entity about how to respond to the allegation.

The Reportable Conduct Directorate at the Office of the Children’s Guardian can also:

- monitor and guide the progress of the entity’s investigation into the reportable allegation or conviction
- require further information about the allegation or the entity’s response to it
- assess whether the entity conducted a fair, transparent, effective and timely investigation
- determine whether appropriate actions have been taken by the entity following the investigation
- work with relevant entities to help them improve their systems for preventing reportable conduct and responding to reportable allegations.

Certain information may be shared within the Office of the Children’s Guardian and with external agencies to keep children safe.

Under the NSW system, the Children’s Guardian has employment related child protection jurisdiction and significant oversight role and review powers. The Guardian also provides training on how to conduct investigations to staff of agencies falling within the reportable conduct scheme and advises on current investigations.

Possible Features of the Proposed New System

Many of the following possibilities are drawn from deliberations canvassed by the ACT Government during their consideration of the introduction of a Reportable Conduct Scheme². In SA, organisations which exercise closest care, supervision and authority over children could become “designated agencies” under a reportable conduct scheme. This recognises that strategies to prevent harm to children should be

² Discussion paper: A Reportable Conduct Scheme for the ACT — A Proposal for Additional Oversight and Investigation of the Conduct of Employees to Help Create Child Safe Organisations, accessed at Discussion Paper: A Reportable Conduct Scheme for the ACT at 2.43pm, 20 December 2021

proportionate to risk. In NSW, about 80 per cent of reports under a reportable conduct scheme come from schools and out-of-home care services.³

These organisations are also often providing services to particularly vulnerable children and young people. As such, they carry a higher level of risk and are already regulated by government, including in relation to requirements to report abuse.

As noted above, designated agencies would be subject to existing reporting, disciplinary and oversight arrangements. A reportable conduct scheme in SA would, as far as possible, leverage existing reporting requirements to minimise duplication and regulatory burden.

A new oversight body will be required under amended legislation to scrutinise the systems that designated agencies have for preventing reportable conduct and handling reportable allegations and convictions involving their employees.

Designated agencies could include, but not be limited to:

- SA Government Departments
- SA Government Schools
- Non-Government Schools
- Child Care Centres
- Religious institutions
- Agencies providing substitute residential care to children
- Agencies providing out of school hours care (combining the categories of Community Services, Education and Communities, Non-Government School – Catholic, Non-Government School – Independent, Substitute residential care, family day care, school camps etc).

3. See, for example, Ombudsman NSW, Annual Report 2013-14, page 87 (combining the categories of Community Services, Education and Communities, Non-Government School – Catholic, Non-Government School – Independent, Substitute residential care).

Types of employees affected could include teachers in both government and non-government systems, child care providers, residential care workers, youth justice workers, health care workers, foster/kinship carers and religious personnel.

Designated agencies would be compelled to notify the new oversight body of all reportable allegations and convictions that arise inside or outside of the employee's work.

Any new reportable conduct scheme would need to be integrated with the current scheme of SA Working with Children Checks. Reportable (and non-reportable) conduct may need further definition under any new proposed scheme.

Any reportable conduct scheme also needs to be integrated with SA's approach to promoting child safe and child friendly organisations, which the SA Government is committed to do under the National Principles for Child Safe Organisations.

A possible definition of reportable conduct

It is proposed that certain misconduct ('reportable conduct') would be required to be reported to an oversight body and appropriately investigated.

A reportable conduct scheme in SA could capture conduct that may fall below a criminal threshold (such as professional misconduct involving inappropriate contact with a child which may not be criminally investigated by police) and could be required to be centrally reported and appropriately investigated. This could prevent individuals who commit certain misconduct involving children from being able to move across sectors and cause further harm to children.

A definition of reportable conduct in SA could include the following offences and misconduct involving a child:

- a sexual offence (including grooming, child pornography offences, 'sexting'),
- sexual misconduct (including inappropriate touching, grooming behaviour falling below a criminal threshold, indecent sexual behaviour, voyeurism),
- physical violence,
- inflicting emotional or psychological harm, or
- serious neglect.

Examples of conduct that would **not** be defined as 'reportable conduct' include:

- touching a child in order to attract a child's attention, comfort a distressed child, or guide him or her,
- a school teacher raising his or her voice in order to attract attention or to restore order in the classroom;
- conduct that is established to be accidental.

This proposed definition of 'reportable conduct' would broadly align with the definition in New South Wales.

Whose Conduct Would be Reportable?

A reportable conduct scheme would not alter any existing obligations to report a criminal offence to police, or affect any police investigation.

It is proposed that certain conduct by 'employees and persons associated' with a designated agency would be deemed reportable conduct. This means relevant conduct by employees, approved carers in an out of home care service, volunteers, contractors, adult students on placement and instructors of religion, will be required to be reported to an oversight body and appropriately investigated.

The person does not have to be engaged to work directly with children for his or her conduct to be centrally reported to an oversight body as reportable conduct.

Whose Conduct Would not be Reportable?

It is proposed conduct by the following persons would **not** be required to be reported as 'reportable conduct':

- Clients of a designated agency. For example, a parent (who is not a volunteer) at a school or a biological parent of a child in an out-of- home care service. This is because there is no appropriate connection between the individual and the agency. This would **not** alter any existing reporting obligations, such as the requirement to report allegations of a criminal offence to police or concerns about child safety to the Department for Child Protection in accordance with existing

legal or policy requirements.

- Adults not associated or connected with the designated agency. For example strangers or visitors. This is because an agency may not be able to appropriately investigate or respond to an allegation against a stranger, visitor or other person who is not sufficiently connected to the agency. This would **not** alter any existing reporting obligations, such as the requirement to report allegations of a criminal offence to police or concerns about child safety to the Department for Child Protection in accordance with existing legal or policy requirements.
- Children. For example, one child harming another would not be required to be reported as 'reportable conduct'. Excluding conduct by children from a 'reportable conduct' scheme is appropriate for the following reasons:
 - It would be consistent with the nature of a reportable conduct scheme as an 'employee conduct' scheme, under which relevant findings may lead to a reassessment of the individual's WWC Check
 - as 'reportable conduct' would include conduct which falls below a criminal threshold, it could unduly restrict a child's ability to seek employment in future, particularly where the reportable incident occurred when the person was very young
 - sharing information about persons under the age of 18 would be inconsistent with the way that information about Youth Court criminal convictions is released or shared

However, it is expected that in these circumstances a designated agency would report any allegations of a criminal offence to police or concerns about the wellbeing or safety of a child to the Department for Child Protection in accordance with existing legal or policy requirements.

Under the NSW scheme, an 'employee' is defined as:

- a) any person who is employed by the agency, whether or not they are employed in connection with any work or activities of the agency that relates to children, and

b) any individual engaged by the agency to provide services to children (including in the capacity of a volunteer).

This would include contractors, foster carers, volunteers, students on placement and instructors of religion.

WHAT WOULD DESIGNATED AGENCIES BE REQUIRED TO DO?

It is proposed the head of each designated agency that provides services for children would be required to set up systems within their agency to ensure that they are advised of any reportable allegations or convictions against their employees.

These systems would be subject to assessment and audit from time to time by the new oversight body.

Once the head of an agency has been advised of a reportable allegation or conviction against an employee/volunteer, they must notify the oversight body as soon as possible, but also within prescribed timeframes.

The agency must advise the oversight body of any action they intend to take.

The oversight body will be able if necessary to investigate an allegation regardless of action an agency intends to undertake.

The agency then can liaise and consult with the oversight body until any investigation is completed and the head of the agency makes a finding.

The completed investigation will then be assessed by the oversight body to ensure:

- whether the reportable allegation or conviction was properly investigated.
- If appropriate action was taken as a result of the investigation.

It is envisaged that designated agencies will be assisted and supported to comply with new requirements through a range of strategies, including factsheets and practice notes, direct telephone advice, training and workshops, information sessions, and through receiving detailed feedback on particular audits.

A reportable conduct scheme would **not** affect any requirements to report to SAPOL or interfere with any police investigations.

What reports should be provided by designated agencies to the oversight body?

Under a SA reportable conduct scheme, the following reports and information could be required to be provided to the oversight body:

- an initial report of the allegation
- the investigation plan,
- periodic updates on the progress of the investigation,
- the investigation report, and/or
- a record of actions proposed to be taken following the finalisation of the investigation.

Requiring the designated agency to provide an investigation report would enable the oversight body to assess whether the investigation finding is sufficiently robust to warrant reassessment of the individual's WWC Check.

This proposed approach would align with the reportable conduct scheme in New South Wales, which requires designated agencies to provide an initial report of the allegation; advice regarding its proposed response (investigation plan); the investigation finding; and the final report of the investigation. The Guardian, as the body administering the scheme in NSW, may also request further information.

Who should be responsible for providing reports to the oversight body?

Where there are currently no relevant reporting obligations or systems, it is proposed that the head of the designated agency would make reports directly to the oversight body.

SA already has in place a range of employee conduct, professional registration and reporting arrangements across child-related sectors. Many of the sectors which could be within scope of a reportable conduct scheme may already have an existing regulatory agency or government department involved in receiving reports and investigating allegations of abuse or other relevant misconduct. Where these exist,

investigatory arrangements or reporting requirements would not be duplicated or replaced.

It is proposed that the oversight body and relevant government agency or department would be able to share information with the oversight body to enable the department or regulatory agency to work with the designated agency as appropriate. This may involve the regulatory agency receiving progress reports as part of their regulatory role.

It is intended that a reportable conduct scheme would build upon existing arrangements to minimise duplicate reporting. It is proposed that where an existing regulatory body already receives reports about an agency's response to abuse, these reporting systems would be leveraged to fulfil the agency's obligations under a reportable conduct scheme.

This could mean that an existing regulatory body or department could pass on relevant reports to the oversight body. For example, The Department for Child Protection could draw on its incident reporting systems to report allegations to the oversight body on behalf of agencies providing out-of-home care or disability services to children.

Once a reportable conduct scheme is operational, further work could also be undertaken to streamline existing reporting processes, including systems that would enable reports to be securely sent to multiple bodies as appropriate.

When should reports be provided to the oversight body?

As noted above, a reportable conduct scheme will not affect any requirements to report to SAPOL or interfere with any police investigations.

It is proposed that where an allegation is being investigated by SAPOL, that the report to the oversight body would be made initially at the same time, but that any investigation would only occur after the SAPOL investigation had ceased. For example, where police have rejected a matter, discontinued an investigation or criminal charges against a person are withdrawn, the designated agency would still be required to report the allegation to the oversight body.

It is proposed that all allegations would be required to be reported to the oversight body as soon as practicable after an incident. Additionally, progress reports could be provided on a 'live' basis in accordance with the investigation plan or as requested by the oversight body or relevant regulatory agency/department.

'Live' reporting would enable timely identification of issues, which could be examined by the oversight body and would maximise the opportunity for the oversight body to maintain an up-to-date picture of allegations and responses across sectors.

This approach would align with the reportable conduct scheme in NSW, where designated agencies are required to report relevant conduct to the Guardian within 30 days (provided no police investigation is underway). The agency also provides the additional reports, including an investigation plan, periodic updates, and findings on a 'live' basis (that is, as they are completed), and may be required to provide further information during the course of the investigation if requested by the Guardian.

WHAT ROLES AND POWERS COULD THE OVERSIGHT BODY HAVE?

It is proposed that an oversight body could monitor and report publicly on 'reportable conduct' investigations and build the capacity of designated agencies to respond to allegations. The oversight body could also potentially administer additional monitoring, oversight and enforcement mechanisms for child safe standards

The oversight body could also be able to investigate a complaint about an agency's handling of a reportable conduct allegation or finding against an employee or volunteer.

It is proposed that the oversight body's functions could include:

- developing and contributing to guidelines/ benchmarks and resources for agencies about responding to and investigating allegations, to ensure consistency across sectors. This could include matters such as standard of proof, ensuring natural justice for the person, ensuring the safety of the child and other related matters

- providing guidance to agencies about responding to and investigating allegations
 - ensuring investigations/reports are sufficiently robust to satisfy a WWC check reassessment
 - receiving reports about allegations, and the progress of an investigation of an allegation,
 - providing guidance in the development of an investigation plan
 - requesting additional information and documents about the allegation, investigation and finding from the agency
 - monitoring the progress of a reportable conduct investigation conducted by or on behalf of an agency (this might involve observing interviews or conferring with the people conducting the investigation about its conduct and progress)
 - working with existing regulators to provide support to agencies to assist them with the progress of investigations
 - providing guidance for designated agencies about how to reach a finding
- working with the agency and relevant existing regulators to build an agency's capacity to respond to and investigate allegations of child abuse
- undertaking its own investigation in certain circumstances
- reporting to the Government if the designated agency or regulator did not take appropriate action
- sharing information with relevant bodies as appropriate, including:
 - SAPOL
 - the designated agency
 - the Department for Child Protection
 - the WWC Check Unit to enable reassessment of an individual's WWC Check professional registration bodies.
- analysing and reporting on trends and issues concerning allegations and findings of child abuse, for example through reports to the SA Government.

- scrutinising the systems in place for keeping children safe in organisations, including organisations' compliance with the child safe standards and for handling and responding to allegations of reportable conduct or convictions.

Issues to note

It is not clear what position the SA Guardian for Children and Young People, the SA Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People, or the SA Ombudsman may have on the introduction of a Reportable Conduct Scheme. No public comment could be found.

Recommendation: That the above information be noted.

Appendix A: Royal Commission recommendations and SA Government response

Oversight of institutional complaint handling

Recommendation 7.9: State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which obliges heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

SA Government response; For further consideration.

DISCUSSION

This recommendation requires further consideration by the Government of South Australia.

South Australia is currently implementing the recommendations made in South Australia's Child Protection Systems Royal Commission, which concluded in August 2016.

The South Australian Royal Commission investigated the adequacy of existing laws and policies in the state's child protection system for children at risk of harm (including children at risk of sexual abuse). In the report, Royal Commissioner Nyland made 260 recommendations for improvements to the child protection system.

Various mechanisms already exist in South Australia to allow government bodies or statutory officers to oversee aspects of child protection matters, including:

- Guardian for Children and Young People: all allegations of child sexual abuse in out-of-home care are reported to the guardian, who keeps a record of matters and engages with the police and the Care Concerns Investigation Unit of the Department for Education

- Commissioner for Children and Young People (established under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*)
- Child Death and Serious Injury Review Committee
- Child Development Council.

Additionally, the capacity of the Ombudsman's Office is being developed to respond to child protection complaints that are referred by the Commissioner or Guardian for Children and Young People.

Recommendation 7.10:

Reportable conduct schemes should provide for:

An independent oversight body

- a. obligatory reporting by heads of institutions
- b. a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child
- c. a definition of reportable conduct that includes the historical conduct of a current employee
- d. a definition of employee that covers paid employees, volunteers and contractors
- e. protection for persons who make reports in good faith
- f. oversight body powers and functions that include:
 - i. scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions
 - ii. monitoring the progress of investigations and the handling of complaints by institutions
 - iii. conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware

- iv. power to exempt any class or kind of conduct from being reportable conduct
- v. capacity building and practice development, through the provision of training, education and guidance to institutions
- vi. public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

SA Government response: For further consideration - See Recommendation 7.9.

Recommendation 7.11:

State and territory governments should periodically review the operation of reportable conduct schemes, and in that review determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse.

SA Government response: For further consideration - See Recommendation 7.9.

Recommendation 7.12:

Reportable conduct schemes should cover institutions that:

- exercise a high degree of responsibility for children
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.

At a minimum, these should include institutions that provide:

- a) accommodation and residential services for children, including:
 - i. housing or homelessness services that provide overnight beds for children and young people
 - ii. providers of overnight camps
- b) activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children

c) child care services, including:

i. approved education and care services under the Education and Care Services National Law

ii. approved occasional care services

d) child protection services and out-of-home care, including:

i. child protection authorities and agencies

ii. providers of foster care, kinship or relative care

iii. providers of family group homes

iv. providers of residential care

e) disability services and supports for children with disability, including:

v. disability service providers under state and territory legislation

vi. registered providers of supports under the National Disability Insurance Scheme

f. education services for children, including:

i. government and non-government schools

ii. TAFEs and other institutions registered to provide senior secondary education or training courses for overseas students or student exchange programs

g. health services for children, including:

i. government health departments and agencies, and statutory corporations

ii. public and private hospitals

iii. providers of mental health and drug or alcohol treatment services that have inpatient beds for children and young people

h. justice and detention services for children, including:

i. youth detention centres

ii. immigration detention facilities.

SA Government response: For further consideration - See Recommendation 7.9

